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The American Political Science Review

CUK-H02423-31-P015161

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VOLUME XXXVI
1942

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Vol. ~~XXXVI~~ No.1
Feb 1942
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The American
Political Science Review

VOL. XXXVI APRIL, 1942 NO. 2

FEDERAL-STATE ADMINISTRATIVE RELATIONS IN THE REGULATION OF PUBLIC SERVICE ENTERPRISES

KARL A. BOSWORTH
Illinois Legislative Council

Recent years have seen increasing experimentation with and reliance upon interlevel administrative collaboration for adapting our traditional practices of government to the rapid extension and elaboration of national policies. In many instances, collaboration across the levels has been based upon the well-tried device of the grant-in-aid. In others, the practices of conferring, advising, transmitting official information, and acting jointly or interdependently for the performance of governmental services have been quickened. In yet other instances where federal as well as state agencies now regulate the same areas of business enterprise, a considerable body of collaborative interlevel practice has been developed. It is with this last field, especially as the collaborative action is directed toward the regulation of public service enterprises, that we are here concerned.

Prior to 1933, federal regulation of public service enterprises had a long experience with railroads (1887), a longer experience with banks coming under the national system (1863), and a shorter experience under the Federal Reserve System (1913),[1] and a yet shorter experience with water-power enterprises (1920). States and localities developed agencies and practices for the regulation of railroads and local transportation systems, banks, water, gas, telephone, and electric utilities, and, in the twenties, highway bus and trucking operations. The subjects covered and the extent of the

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[1] Legalists may quarrel with this classification of bank regulation, and their legal reasons will be accepted as legal reasons.

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authority of the state agencies varied from state to state. Bank regulation on the two levels tended to proceed independently. Federal water-power regulation tended to facilitate state regulation of electric utilities from case to case, largely without the establishment of continuing associative practices. The Interstate Commerce Commission and the state railroad regulation authorities, prior to 1920, alternately spoke of their joint problems—sometimes words resulted in temporary operational association—and scowled at each other over contested areas of jurisdiction. Following the Transportation Act of 1920, the judicial settlement of federal dominance in railway regulation, and the adoption of facilitating administrative agreements, regular practices of interlevel collaboration in certain aspects of railroad regulation developed.[2] The I.C.C. had since 1910 regulatory authority over certain interstate aspects of telegraphy and telephony, but, in its emphasis upon railroad regulation, largely left these aspects of communication alone. The regulation of radio communication has not had significant interlevel administrative aspects. The regulation of aëronautics, though primarily federal, had included state requirement of federal license for intrastate operation and, in a few cases, state license for such operation.[3]

While the states were nearly alone in the regulation of public service enterprises, with the exception of railroads, the enterprises grew and were combined into operating units transcending state lines, financial control ascending, at the same time, through pyramids of corporations to holding companies. Both the horizontal and vertical movements removed aspects of utility operations from state authority, either through judicial protection of interstate commerce from state action or through the inaccessibility of the corporate kinsfolk.

In the period 1933 through 1935, Congress by a series of acts illuminated much of this utility shadowland, provided standards and agencies for the regulation of aspects which had outgrown the states, protected in considerable degree from federal administrative action the spheres of public service enterprise traditionally within effective state authority, and, with a few exceptions, provided for federal-state collaboration in the administration of portions of the acts.[4]

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[2] For a history of I.C.C.-state relations to 1935, see National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935 (New York), pp. 313–52. All issues referred to herein are published by the State Law Reporting Co.

[3] *Ibid.*, 1932, pp. 550–51, 557, for tabulations of state aëronautics regulation of that date.

The geometry of politics in these legislative movements frequently included demands by and in the name of state regulatory commissions for regulation of the aspects of public service enterprises which had escaped these agencies, for the protection of their own jurisdiction, and for assistance in their regulatory problems. Thus federal-state collaboration in the administration of the new acts was in part a result of representations on behalf of the state regulatory commissions at the legislative phase.

The chief instrument of the states in these representations was the National Association of Railroad and Utilities Commissioners. As early as 1925, the Association proposed a motor carrier act including many of the provisions of the present act, and in the following years it asked the enactment of a revised plan which in 1935 was substantially adopted.[5] The mark of the National Association is likewise found in the Communications Act, "the representatives of this Association [being] able to secure the incorporation into the bill of [a] provision" excluding federal authority over local telephone exchange service, even where interstate.[6] In the pre-legislative phase of the Public Utility Act, representatives of the National Association conferred with the Federal Power Commission and agreed upon the limits of federal authority to be specified in the act and upon the provisions for federal-state collaboration.[7] In all of these instances, the state officials congratulate themselves that the "excesses" of federal jurisdiction over railroads are not to be repeated under the new acts. Descriptions of the practices of inter-level action under the various acts, with indications of tendencies where possible, are found in the following sections.

INTERSTATE COMMERCE COMMISSION RELATIONS WITH THE STATES

Federal-state administrative collaboration in the regulation of transportation has been conditioned by the issues and facts of constitutional jurisdiction over rail and motor carriers. When there has been competition for jurisdiction between the two levels, or when impending judicial decisions made the boundaries of jurisdiction unclear, collaboration has been infrequent or restricted to uncontroversial matters. When constitutional uncertainties have been removed, and when Congress has given specific authorization, interlevel action has developed freely.

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[4] The Securities Act and the Federal Deposit Insurance Act in 1933, the Securities Exchange Act and the Communications Act in 1934, the Motor Carrier Act, the Public Utility Act, and the Banking Act in 1935 were the congressional contributions.

[5] National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935, pp. 352–58.

[6] *Ibid.*, pp. 360–61.

[7] *Ibid.*, pp. 365–67.

Railroad Regulation. Early in the history of the Interstate Commerce Commission, members saw the desirability of coördinating their work with that of the state commissions. Conferences ensued, but agreement could be reached only on matters such as the accounts and statistics which the railways should keep and report. Differences over the rôle which the federal agency was to perform prevented additional agreement.[8]

The desirability of interlevel collaboration in the treatment of disparities between interstate and intrastate determinations of railway rates was expressed in recommendations of the I.C.C. several times prior to 1920. The Transportation Act of that year, for the first time, gave legislative authorization and direction for the interlevel treatment of such difficult issues. The act (1) required the I.C.C. to notify state regulatory commissions when any proceeding before the Commission brought into issue determinations (orders or regulations) of the state commissions on matters of rates, services, and other practices; (2) authorized the I.C.C. to confer with state commissions on rate matters and to hold joint hearings with state commissions where the authority of the states may be affected by the Commission's action; and (3) authorized the Commission to avail itself of the coöperation, services, records, and facilities of state authorities in enforcement of the act.[9]

These provisions were implemented by an agreement entered into first in 1922 and revised in 1925 stating policies and procedure for the use of the joint devices. Joint committees composed of five from the I.C.C. and eight from the association of state commissions drew up the agreements in both cases.[10] After the issues of jurisdiction under the new act had been judicially clarified, use of the joint hearing device became frequent, reaching its height in the mid-twenties. Table 1 indicates the trend in this activity, showing a tendency to decline since 1926 and becoming accentuated during the present decade.[11]

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[8] I. L. Sharfman, *The Interstate Commerce Commission* (New York, 1931–37), I, 82–83. See the excellent article by Martin L. Lindahl, "Coöperation Between the Interstate Commerce Commission and the State Commissions in Railroad Regulation," *Mich. Law Rev.*, Vol. 33 (1934–35), 338–97.

[9] 41 *Stat.* 484. Sharfman discusses the provisions in *op. cit.*, II, 308–09.

[10] Sharfman, *op. cit.*, II, 310–16.

TABLE 1. NUMBER OF CASES IN WHICH JOINT STATE-I.C.C. HEARINGS WERE HELD ON RAILROAD MATTERS
1922–39[a]

Year	*Car Service Cases*	*Construction and Abandonment Cases*	*Rate Cases*	*Total Cases*
1922–25	3	36	41	80
1926	(6)[b]	44	51	101[c]
1927	6	18	28	52
1928		38	28	66
1929		36	26	62
1930		41	22	63
1931		25	20	45
1932		19	22	41
1933		57	14	71
1934		22	16	38
1935		7	14	21
1936		15	7	22
1937		14	10	24
1938		6	10	16
1939		9	14	23
1940		2	8	10

[a] Source: through 1929, I. L. Sharfman, *The Interstate Commerce Commission*, II, 317; since 1929, I.C.C., *Annual Reports* (see contents for item, "Coöperation of Federal and State Commissions").

[b] Parentheses signify number of states acting in such cases.

[c] The total given assumes that each of the six states in the first column acted in one case.

Although the number of cases tended to decline during the thirties, it is said that "most of the important general rate cases which have been heard by the Interstate Commerce Commission since the adoption of the agreement have been coöperative cases."[12] State commissioners, however, received the impression that the I.C.C. did not favor the use of the joint hearing device in the so-called

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[11] See Lindahl, *op. cit.*, for characteristics of the joint hearing.

[12] National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935, p. 340.

Shreveport cases.[13] The I.C.C., however, disclaimed such an attitude and invited the participation of the states in these actions.[14] In 1937, the National Association of Railroad and Utility Commissioners adopted, with the approval of the I.C.C., a revision of its agreement for joint hearings in which attempt was made to clear up this misunderstanding and to define more specifically other mutual understandings of the federal and state commissions.[15] As a result of the policy shifts occurring in connection with these negotiations, it is said that "Shreveport litigation in the courts has now almost disappeared."[16] The Transportation Act of 1940 gave the I.C.C. authority to reimburse state commissioners for expenses incurred by them in attending joint hearings.

Motor Carrier Regulation. With the passage of the Motor Carrier Act of 1935, the legislative basis was prepared for a new set of relationships between the I.C.C. and the state commissions regulating trucks and buses. The act established a system of federal (I.C.C.) regulation of interstate commerce by motor carriers, including complete federal authority with respect to permission to operate, rates, safety considerations, etc. All states but one had some degree of regulation of trucks or buses, but their jurisdictions had, in part, been judicially eaten away by rulings preserving the freedom of interstate commerce. The loss of jurisdiction by the states resulting from the strong, inclusive terms of the federal act was made more palatable to the states by the inclusion of provisions for state participation in administration. The act directs the I.C.C. to refer certain cases for original hearing and provisional determination to joint boards consisting of representatives of the state governments involved in the issue, and permits I.C.C. reference of additional cases to such joint boards. The matters required to be so referred are: (1) those in which the motor carrier operations or proposed operations involve no more than three states; and (2) with respect to type of issue, those involving application for, suspension, or revocation of license, etc., application for privilege of merger, etc., complaints as to violation of law and rules, and complaints as to rates and charges.[17]

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[13] Cases in which the I.C.C. increases intrastate rates over the objection of state commissions on the ground that the state-prescribed rates discriminate against interstate commerce. The name derives from the judicial decision allowing such I.C.C. orders.

[14] National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935, pp. 342–52, 372–87.

[15] *Ibid.*, 1937, pp. 49–52, 54–56; text at pp. 62–69.

[16] *Ibid.*, 1939, p. 170.

Joint boards ordinarily consist of a member from each state affected by the matter at hand. When the need arises for such a board, the Commission must notify the commissioners of the states concerned, asking them to *nominate* a person from their membership or otherwise. In case the state commission fails to nominate, the governor may do so. If it approves of the nominees, the Commission *appoints* them as members of the particular boards. Subsequently, the difficulty of authorizing substitutions on short notice resulted in I.C.C. appointment of as many as five board members from each state for each board, so that any one of them would be qualified. If two or more members of a board are appointed, the board may proceed to operate even though a third or other state does not nominate. Boards, once formed, continue in existence until dismissed by the Commission. And a state may at any time offer a new nominee in place of its representative on a board. While on duty, members of state boards receive travel and subsistence from the federal government. While sitting on a case, joint boards have the same rights, powers, and duties as examiners of the Commission.[18] The I.C.C. "has never appointed as a member of a joint board anyone except a member of a state agency or an employee of a state agency, but the Commission has never refused to appoint a nominee who is either a member or an employee of a state agency. Joint board members are usually employees rather than heads of state agencies."[19]

In addition to the required use of joint boards, "the Commission is authorized to confer with or to hold joint hearings with any authorities of any state in connection with any matter arising in any proceedings under" the Motor Carrier Act, and is "also authorized to avail itself of the coöperation, services, records, and facilities of such state authorities as fully as may be practicable in the enforcement or administration" of the act.[20]

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[17] 48 *Stat.* 548. For a thorough analysis of the genesis, and the administrative and constitutional considerations at the time of enactment, see Paul G. Kauper, "Utilization of the State Commissioners in the Administration of the Federal Motor Carrier Act," *Mich. Law Rev.*, Vol. 34 (1935–36), 37–84.

[18] 49 *Stat.* 549. See Kauper, *op. cit.*, for considerations of conflict of office in these appointments.

[19] Attorney-General's Committee on Administrative Procedure, *Interstate Commerce Commission* (Washington, Department of Justice, Monograph No. 24), II, 169.

Orders recommended by joint boards have the same status as orders recommended by an examiner or member of the Commission who has conducted a hearing. That is, the order stands as the order of the Commission unless protested by an affected party or revised on the initiative of the Commission. By an amendment of 1938, joint boards may, if they do not wish to recommend an order, make findings of fact on the basis of which the Commission will enter an order.[21]

In undertaking the administration of the act, the Commission considered it necessary before establishing rules and regulations for interstate motor carriers to consider "the present requirements of state and municipal authorities," and to avail itself of the "advice and counsel of the several state regulatory bodies having jurisdiction over motor carrier operations."[22] Regulations as to the forms of accounts to be kept by motor carriers were put into effect by the Commission on January 1, 1938, and monthly, quarterly, and annual reports were prescribed. The Commission says: "It is gratifying to report that splendid coöperation with state authorities has been received in respect to these accounting regulations." To meet the situation in which many carriers would have to report to at least two agencies, "informal correspondence was inaugurated with the state authorities, with the result that in the case of all states, save one, in which forms of accounts are prescribed for intrastate motor carriers, the carrier will be required to keep but one set of accounts, and that is to be in conformity with our requirements."[23] The number of states requiring annual reports from carriers under their jurisdiction in conformity with the reports to the federal agency was, in 1940, twenty-one; and additional states were contemplating establishing identical annual report requirements.[24]

The formulation of rules for equipment and operation in the interest of safety presented knotty problems of differing practice. The

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[20] 49 *Stat.* 550. One of the few congressional recognitions of official associations, and an intimation of the congressionally anticipated relations under the act is the provision that space in the I.C.C. building, or otherwise, should be provided for the national association of state commissioners. Such space was provided in the I.C.C. Building.

[21] 52 *Stat.* 1237.

[22] Interstate Commerce Commission, *Annual Report*, 1935, p. 74.

[23] *Ibid.*, 1938, p. 84.

[24] *Ibid.*, 1940, p. 107.

Commission reported in 1936 that it had found the states "ready and willing to coöperate in every way, to our great benefit" in consultations on this matter at each stage.[25] Rules were promulgated at the end of 1936, and were accompanied and followed by wide adoption by the states. Some states had no rules, and in some others the existing state rules did not conflict with new federal rules. By July 1,1940, forty states had adopted part or all of the Commission's motor carrier safety regulations.[26]

A peculiar instance of federal dependence on state standards is found in the I.C.C. regulations relating to the companies with which motor carriers may insure against liability. Says the Commission:

> "Under our rulings any insurance company is qualified to file certificates of insurance in behalf of a carrier if it is licensed to do business by each state in which the operations of the carrier are covered by the insurer's liability. We have, in effect, adopted for our purposes the standards of eligibility and responsibility for insurance companies established in the several states for the protection of their citizens"[27]

The putting into effect of federal license provisions created difficult problems in the solution of which the states gave aid. A "grandfather clause" of the act authorized the issuance of federal licenses to all motor carriers operating in interstate commerce as of certain dates. Over 80,000 operators applied for licenses on this basis, and much trouble was encountered in verifying the information submitted in applications. In 1936, the Commission said: "The facts in regard to bona-fide operation on the 'grandfather' date, including routes and character of traffic handled, are being checked on the records of the state authorities, and with their help," as well as by other means.[28] Though having some field force for the detection of violations of rules and license requirements, the I.C.C. has been in some degree dependent on the willingness of the industry to police itself, and upon state commissions and officials. In 1936, the I.C.C. reported that "state commissions are reporting conditions to our field forces;"[29] while in 1939, a "nation-wide survey" of compliance with the federal rules regarding hours of service of drivers was conducted, "in which state agencies coöperated in many cases."[30]

Although it is not evident that the joint board device for the conduct of hearings has been employed to its anticipated degree, the system has apparently had wide use. As early as 1936, the Commission reported that "at least one joint board representative from each state is engaged in this work at all times."[31] Though rarely is a case set for joint board hearing except where the Commission is under statutory compulsion to offer that form of hearing to the states affected, well over one-half of the cases under the act which are set for formal hearing are heard by joint boards.

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[25] *Ibid.*, 1936, p. 84.

[26] *Ibid.*, 1940, p. 115.

[27] *Ibid.*, 1937, p. 73.

[28] *Ibid.*, 1936, p. 71.

[29] *Ibid.*, p. 83.

[30] *Ibid.*, 1939, p. 117.

In Volumes II through VII of the I.C.C. Motor Carrier Cases appear 453 cases heard by examiners of the I.C.C. The corresponding number for the joint boards is 825. In these cases, the joint boards had a better record in getting their rulings sustained by the I.C.C. than did the latter's examiners; nearly 14 per cent of the examiner's rulings being reversed or modified, compared with 10.4 per cent for the joint boards.[32] These tabulations omit one volume which reports only "finance" cases.

The arrangements for scheduling the large numbers of joint board cases have presented a difficult task, and the demands upon state staffs for services on joint boards have been heavy. Although there is some protest from the state side regarding this burden, the general attitude has been: "We asked to participate and, therefore, we should do our part."[33] That this has not been the universal attitude of state representatives is shown by the observation that in twenty per cent of the hearings scheduled before joint boards no state representative appears, and that in an additional portion only one joint board member appears. An examiner of the I.C.C. Motor Carrier Section, known as a joint board agent, attends each joint board hearing to "advise and assist" the board. When the board members do not appear, the joint board agent conducts the hearing. It appears that with a full board present the I.C.C. agent generally conducts the hearing and almost invariably drafts the report and recommended order.[34]

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[31] *Ibid.*, 1936, p. 79.

[32] National Association of Railroad and Utilities Commissioners, *Proceedings*, 1938, p. 218.

[33] *Ibid.*, 1936, pp. 171–89, 199–229. In more recent years National Association members were somewhat worried about jurisdictional problems, viz., the assumption of federal jurisdiction over intrastate carriers who trans-ship goods which are in interstate commerce.

[34] Attorney-General's Committee on Administrative Procedure, *Interstate Commerce Commission*, pp. 169–70.

A few cases have involved the use of the joint hearing—as in railroad cases—in which representatives of the states sit with a section of the I.C.C., participate in the hearing, and express their views on the findings and the proper rulings to the federal commissioners, who, legally, make the decision. These cases have involved motor carrier insurance regulations,[35] freight classifications, and rates.[36]

The conditions prevailing with respect to motor carriers seem to have been propitious for considerable degrees of federal-state interaction. State experience in truck and bus regulation, the previously unregulated interstate commerce, legislative recognition of a place for the states in federal enforcement, the hugeness of the regulatory task, and an attitude among the federal administrators favorable to collaboration with the states have combined to produce apparently mutually satisfying relations at many points in the administration. If experience with the joint boards has indicated a need for revision of the device, or a redefinition of the cases in which it should be used, the facilities of the National Association are available for a reconsideration of the problem.

FEDERAL DEPOSIT INSURANCE CORPORATION

Activities pursuant to the creation of the Federal Deposit Insurance Corporation in 1933 have created a new web of federal-state relations. Not only have new interofficial activities developed; in addition, federal jurisdiction over banking has been so extended that the portion remaining solely within state jurisdiction is very small.

At the inception of Federal Deposit Insurance operations, American banks fell into three classes according to their supervisory authorities—national banks, state banks which were "members" of the Federal Reserve System, and state banks not "members." The first two classes were required by the act creating the F.D.I.C. (in order to retain their class status) to insure their deposits with the Corporation. The third class (state banks under sole state authority) were permitted to apply to the Corporation for insurance of deposits. It is with respect to this group that the new interlevel relations have been developed.

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[35] I.C.C., *Annual Report*, 1938, p. 220; *ibid.*, 1939, p. 170.

[36] *Ibid.*, 1940, p. 37.

The statutory terms, with respect to the third class, provided that:

> "Any State bank which is not a member of the Federal Reserve System, with the approval of the authority having supervision of such State bank and certification to the Corporation by such authority that such State bank is in a solvent condition, shall, after examination by, and with the approval of, the Corporation, be entitled to become a member of the Fund."[37]

By the end of the calendar year 1933, over 7,800 applications were received, and the applications of nearly 1,000 rejected.[38] Although the F.D.I.C. established a system of bank examination and conducted examinations of applicant banks, the following statement in a report of the Corporation suggests that the certifications of solvency by state authorities were critical in determining admission to the insurance fund. Said the chairman of the Corporation:

> "It was natural, in view of the speed with which deposit insurance originally was put into effect and in view of the fact that certification of mere solvency was the sole requirement for admission to the temporary insurance fund, that some banks should become insured that had meager chances of long survival. It was clearly the intent of Congress, however, that insurance should be extended to the greatest possible number of depositors. Leniency on the part of supervisory officials in certifying the solvency of institutions under their jurisdictions, therefore, was probably socially preferable to a too rigid measurement of asset sufficiency."[39]

Thus, at the stage of admitting banks to the insurance system, it would seem that the federal agency depended in considerable degree on determinations made by state bank regulating authorities.

F.D.I.C. relations with the states have assumed three other prominent phases: the F.D.I.C. stimulation of state legislatures to pass acts facilitating corporation operations, the case-by-case relations between the Corporation and the state authorities when state banks get into insecure condition, and the attempts by the F.D.I.C. to alter and make uniform the standards used by state authorities in chartering and regulating banks.

State legislation sought by the F.D.I.C. was the authorization of state bank participation in the insurance system, authorization of the appointment of the F.D.I.C. as receiver or liquidating agent of closed insured banks, authorization of borrowing by state banks from the Corporation, specific authorization for collaboration between state authorities and F.D.I.C. examiners in making examinations and in the exchange of information, and legislation giving state bank authorities greater control over the chartering of new banks.[40] By 1936, these proposals "had been adopted in whole or in part in most of the states."[41] More specific indication of the effects of this influence is to be seen in the statement in a report for 1937 that the "appointment of the Corporation as receiver for suspended insured state banks was possible in 31 states. In 7 other states, the state banking authorities may appoint the Corporation to assist in the liquidation of closed banks."[42]

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[37] 48 *Stat.*, 179.

[38] F.D.I.C., *Report of Operations*, 1934 (Washington, 1934), p. 3.

[39] F.D.I.C., *Report to Insured Banks*, June 30, 1939 (Washington, 1939), pp. 2–3.

Interlevel activities in the treatment of specific cases defy generalized description and defy much more the demarcation of trend lines. However, a few types of such action can be pointed out. Through its periodic examination of banks, the F.D.I.C. may discover practices which are illegal, "unsafe, or unsound," facts which may become grounds for discontinuing the insurance of deposits. When these findings occur, the F.D.I.C., according to its published statement of practices, cites the bank to its supervising authority—the state bank regulation agency in the case of state banks. After a waiting period of 120 days, the F.D.I.C. reëxamines the bank to see whether it has on its own initiative, or the initiative of the state authority, repaired the conditions complained of, the Corporation proceeding thereafter on the basis of such findings.[43] There is implicit evidence from the F.D.I.C. reports that the federal agency participates with the state agencies in a much more informal manner than the described procedure would imply. Where relations are "good," it would seem that there is a free exchange of information regarding "troubled" banking institutions and a negotiated treatment of the issues of the desirability and practicability of saving banks by loans, mergers, or both, or of proceeding with liquidation and the payment of insured depositors. For instance, in 1937, the Corporation reported that it was "coöperating with several supervisory authorities in making a complete survey of the banks under their supervision with a view to determining what corrective steps can be taken with regard to weak and unsound banks."[44] Although the issues of jurisdiction over the property of closed insured banks seem generally to have been amicably settled between the levels, the Corporation secured the enactment of an amendment in 1938 relieving it of the obligation to pay depositors in closed state banks until the Corporation's rights to the depositor's share of the assets of the bank are clearly recognized by state law, administrative authority, or otherwise—an indication that a sanction was needed in some states.[45]

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[40] F.D.I.C., *Annual Report*, 1936 (Washington, 1937), pp. 32–33.

[41] *Ibid.* [42] *Ibid.*, 1937, p. 24. [43] *Ibid.*, 1936, pp. 16–17.

[44] F.D.I.C., *Report to Insured Banks*, June 30, 1937 (Washington, 1937), p. 3.

F.D.I.C. has attempted to promote policies of banking and state administration of banking which in the opinion of the Corporation's directors would give the insurance program the greatest likelihood of success. Viewing the federal assumption of deposit insurance as possibly conducive to less caution on the part of bankers and less sense of responsibility on the part of state administrations, and reminding themselves that commercial banking must have a better record in the future than in the past if the existing system of insurance is to succeed, the directors have undertaken, in addition to the formulation of banking rules and a periodic examination program, programs of securing the assistance of the state administrations in the effectuation of the F.D.I.C. banking policies. Two programs illustrate this movement. One is that in which the F.D.I.C. discourages the chartering of state banks when the capitalization, the quality of the proposed managers, and the banking and community conditions indicate that the life of the bank is not certain to be long. The Corporation apparently encourages consultation by the state administrators on individual applications for charters and, by provisionally granting or withholding the insurance privilege, attempts to influence state chartering policy. For instance, in one series of reports the Corporation lists the number of banks chartered during the report period which are uninsured—seven, four, and zero, in a recent series. The Corporation said in 1939 that "supervisory officials have continued to coöperate in preventing the organization of unsound banks and in chartering only banks that could qualify for deposit insurance,"[46] and in 1940 noted that only two of the thirty-two banks first chartered during the year were uninsured at the end of the year.[47]

The other program illustrating this Corporation policy is that of securing agreement to the application of its standards by states in their bank examination activities.

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[45] 52 *Stat.*, 442.

[46] F.D.I.C., *Report to Insured Banks*, June 30, 1939, p. 2.

[47] *Ibid.*, Dec. 31, 1940, p. 3.

> "In June, 1938, agreement was reached among the supervisory officials of the country with regard to the adoption of uniform standards of bank examination. From the standpoint of supervisors in general, and the Federal Deposit Insurance Corporation in particular, adoption of these standards will make supervisory policy more effective. The standards with regard to the determination and criticism of the quality of loans and securities conform in all essential respects to those which have been used by the Federal Deposit Insurance Corporation."[48]

Reviewing F.D.I.C.'s short history, one may note that the federal agency depended heavily on state bank authorities in the inception of the insurance program and has, especially since 1935, developed practices of association with state agencies in the treatment of particular cases and in the formulation of bank regulation policy.

FEDERAL COMMUNICATIONS COMMISSION

The Communications Act of 1934, in merging the old duties of the Federal Radio Commission and the duties of regulation of interstate telegraph and telephone operations under the new Federal Communications Commission, made a number of allusions to how the new commission should or could act with the states. Any "body politic or municipal organization or state commission" was given specific permission, along with "any person," to file complaints with the federal Commission against any communications common carrier.[49] In the event of an application to the Commission by a carrier for permission to extend or add to its lines, the Commission is directed to give notice to the "governor of each state in which such additional or extended line is proposed to be constructed or operated, with the right to be heard."[50] Likewise, in cases of application for permission to consolidate, merge, or purchase telephone companies, the Commission is under obligation to give notice and opportunity for hearing to affected states.[51] The Commission is given authority to exempt from its rules regarding the keeping of accounts, records, and memoranda, and the charging of depreciation, "the carriers of any particular class or classes in any state . . . where such carriers are subject to state commission regulation with respect" to these matters.[52] Before prescribing any requirements as to the records and accounts which carriers are to keep, the Commission is directed to "notify each state commission having jurisdiction with respect to any carrier involved, and . . . give reasonable opportunity to each such commission to present its views, and . . . receive and consider such views and recommendations."[53] The Commission is given authority to classify telephone property according to whether or not it is used in interstate commerce, but not before notice and opportunity for hearing is given to the affected states.[54]

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[48] *Ibid.*, June 30, 1939, p. 2.

[49] 48 *Stat.*, 1073.

[50] *Ibid.*, p. 1076.

[51] *Ibid.*, p. 1080.

[52] *Ibid.*

The act of 1934 permits the use of joint boards in the conduct of hearings. Unlike the provision of the Motor Carrier Act, the reference of cases to joint boards is discretionary under the Communications Act. "The Commission *may* refer any matter arising in the administration of this act to a joint board composed of a member . . . from each of the states in which the wire or radio communication affected by or involved in the proceeding takes place or is proposed."[55] Boards are to be formed by appointment of the Commission from nominees proposed by state commissions. The Commission is authorized to confer with any state commission having jurisdiction over the same carriers, and, in the typical legislative phrase in these matters, "to avail itself of such coöperation, services, records, and facilities as may be afforded by any state commission."[56]

Although interlevel action under these provisions has apparently fulfilled the minimum statutory requirements, the Commission has been little inclined to extend associative activity to the degree permitted by the act. Interaction has apparently occurred freely in the formulation of rules for keeping and reporting accounts by carriers and in the exchange or transfer of information resulting from inquiries, but has not been extended to overt inclusion of the state authorities in the formulation of substantive policy or in the determination of issues in particular cases through the joint board or joint hearing devices.

The F.C.C. has taken the view that previous frailty of regulation of telephone and telegraph, especially on the part of states, has resulted from lack of requisite information regarding the practices and policies of the multicorporate communications giants. Complexity of the problem of information and lack of jurisdiction over its sources have generally frustrated state attempts to secure the necessary facts. The Commission considers its primary function in this matter to be the collection and formulation of the illusive data, both for its own use and for distribution to state authorities.[57] As directed by statute, the Commission has requested and considered state commission views—sometimes in conference with the state officials—on the problems of utility accounts and records which would produce the desired information.[58] The Commission's statistical compilations resulting from the accounting rules and reporting system have been freely circulated to state commissions as well as to other interested persons.[59]

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[53] *Ibid.* [54] *Ibid.*

[55] *Ibid.*, p. 1098. This is the only authorization in the act for state participation in the regulation of any aspect of radio communication. The Commission has, in its radio licensing work, come into contact with city and state police, and with police groups. *Annual Report*, 1935, pp. 37–40. [56] 48 *Stat.* 1098.

A peculiar incident which tends to confirm state interest in and approval of the Commission's rules with respect to the keeping of telephone accounts was the intervention by the National Association of Railroad and Utilities Commissioners in judicial proceedings in which the Commission's authority was being contested by the American Telephone and Telegraph Company. The Company was protesting against the order that its accounts be adjusted to show its property at original cost, and the Association intervened in support of the Commission order.[60]

By joint resolution, Congress in 1935 authorized the F.C.C. to make a long-term study of the American Telephone and Telegraph Company and other telephone companies. Through the distribution of the findings of this study, the states have been provided with much information of use in regulation not available prior to F.C.C. or through the periodical reports of companies to F.C.C.

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[57] This view is expressed in Federal Communications Commission, *Investigation of the Telephone Industry in the United States*, House Document No. 340, 76th Cong., 1st Sess. (Washington, 1939), p. 569.

[58] *Annual Report*, 1935, p. 66; *Annual Report*, 1937, p. 93. These interactions produced a negotiated agreement after there had originally been many differences. The "Telephone Division has pursued a policy of close coöperation, in all matters relating to telephone accounting, with state regulatory bodies and with the National Association of Railroad and Utilities Commissioners—particularly with the Association's Committee on Statistics and Accounts of Public Utility Companies. . . . The coöperation and assistance of representatives of state regulatory bodies and of the association and its committee are gratefully acknowledged." *Ibid.*, p. 94. Telegraph company accounts received associated treatment the following year. *Ibid.*, 1938, p. 30. See also National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935, pp. 362 ff.

[59] *Annual Report*, 1935, p. 70.

[60] F.C.C., *Annual Report*, 1937, p. 92. The case was American Telephone and Telegraph *et al.* v. U.S. and F.C.C., 14 Fed. S., 121, 299 U.S. 232. The order was upheld.

> "Many reports developed during the Telephone Investigation were distributed to the State Commissions. In addition to these reports, the Telephone Rate and Research Group, one division of the investigatory organization, has therefore prepared and the Commission has distributed to the State Commissions its comprehensive reports on the make-up of Bell System toll-rate schedules in force throughout the country, and on the 'principles' which apparently underlie Bell System toll-rate structures. . . . The National Association of Railroad and Utilities Commissioners, through its officials and representatives, as well as the state commissions individually, have at all times offered their full coöperation in connection with the efforts of the Telephone Rate and Research Department, and the Commission deems the development and practice of full and frank coöperation on the many telephone rate problems of joint import to the states and the nation to be a matter of sound public policy."[61]

State commissions, upon invitation, sent representatives to hearings and conferences, and supplied "copies of records, briefs, and exhibits in telephone cases heard and decided by them."[62] The advice of state commissions was sought in the staffing of the federal investigation, and in some cases the loan of state personnel was secured.[63]

Though there has been free interaction upon most matters, there has been little interlevel participation in the formalities of administrative adjudication. The explanation given is that few cases have arisen in which there has been a desire for such interlevel action. In 1938, an agreement was entered into between the Communications Commission and the state commissioners—through the National Association of Railroad and Utilities Commissioners—stating their understanding of the conditions under which formal joint action is proper under the act, and the procedures to be followed in setting up and using the joint board and joint hearing devices.[64] Prior to the adoption of the agreement, the telegraph companies had petitioned the federal agency for an increase in interstate rates, giving notice that they anticipated raising intrastate rates as well. Upon negotiation between the federal agency and the Committee on Coöperation of the National Association, it was agreed that the hearing on the case should be "coöperative." The Commission requested the National Association to appoint a committee to represent the states in the hearings, and although no agreement on procedure existed at the time, the National Association complied. "After an extended hearing and consideration, the application of the telegraph companies was denied. In this decision, all of the state commissioners concurred with the majority of the Federal Communications Commission."[65]

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[61] F.C.C, *Proposed Report; Telephone Investigation* (Washington, 1938), p. 770; see also F.C.C., *Final Report of the Telephone Rate and Research Department* (Washington, 1938), pp. 71–72.

[62] Commissioner Paul A. Walker, in National Association, *Proceedings*, 1935, p. 400. [63] *Ibid.*, p. 403.

[64] The text of the agreement is on pp. 228–33 of the *Proceedings* of the National Association.

In another case, a telephone company serving a metropolitan area in two states attempted to enlarge its "exchange" (local call) area, reducing its "toll" (long distance and hence interstate, under the statute) business, thus retreating from federal jurisdiction. The federal Commission instituted a hearing in the matter and invited the relevant states to appoint representatives to sit with federal representatives at the hearing. No other cases involving collaborative use of the formal hearing procedures had arisen through fiscal 1940.

Many of the complaints received by the federal Commission relate to conditions in local exchanges, and are thus outside federal jurisdiction. "Upon the receipt of a complaint relative to a matter beyond the scope of the Commission's jurisdiction, the complainant is advised of such fact and referred to the proper local or state regulatory authority."[66] In some state cases, federal investigational employees have been loaned to the states.[67]

Apparently, federally collected information has passed freely to the states. The question arises as to the usefulness to states of utility accounts established on bases other than those approved for rate-making by state statute, judicial decision, or commission ruling. In so far as states maintain different standards from those imposed by the federal Commission, it would seem that such records would have limited usefulness. Conceivably, the availability of full information upon one basis may result in a tendency to adopt that basis rather than the continued use of bases with respect to which only incomplete information, or information provided at the discretion of the companies, is available. No evidence is here adduced to indicate any such tendency. The stakes involved in communication regulation are so great that the possibility of shifts in policy at both federal and state levels precludes estimates of future federal-state administrative relations.

[65] *Ibid.*, 1938, p. 227.

[66] *Ibid.*, 1936, p. 37.

[67] *Ibid.*, 1938, p. 150.

FEDERAL POWER COMMISSION

Prior to 1935, Federal Power Commission relations with the states were concerned almost wholly with hydroelectric power. States or municipal corporations, along with private corporations, were applicants to and licensees of the federal agency for the use of points along navigable streams for water-power production. Licensees, governmental or public service, were under federal regulation in the construction of such works, and, when not regulated by state commissions, in matters of accounts, rates, and services. To states regulating electric utilities, the Federal Power Commission provided available information about federal licensees. There was also collaboration with the states in planning the use of water power, in federal collection of fees from water-power licensees for use of state lands, and in incidental matters, such as federal evaluation of privately operated hydroelectric works which a state wished to purchase.[68]

The Public Utility Act of 1935[69] and the Natural Gas Act of 1938, by endowing the Power Commission with authority to regulate some intrastate aspects of interstate electric and gas utilities, and by specific references to action with the states in these matters, have established a new system of operating relationships between the levels. The act of 1935 (1) authorized use of the joint board composed of representatives of the affected states in the original hearing and determination of cases arising under the act; (2) authorized the conduct of joint hearings between the federal agency and representatives of one or more states in matters of related jurisdiction; and (3) directed the federal agency to make available any information which "may be of assistance in state regulation," to loan members of its staff to states for service as witnesses, when they may be spared, and to use the services and facilities of state agencies where offered.[70]

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[68] See Federal Power Commission, *Annual Report*, 1934 and previously. See also National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935, pp. 362–65.

[69] Though none of the acts administered by the Securities and Exchange Commission specifically provides for collaboration with state officials, such relations have developed at various points. Information secured by the S.E.C. from utility holding, intermediate, and service company reports based on a uniform accounting system is freely supplied to state utility regulation authorities, as is information derived from the registration statements filed with the Commission by utilities. The S.E.C. acts as a clearing-house of information regarding persons suspected of securities frauds, having files on over 35,000 such persons and providing periodical confidential releases as well as special services to state securities law enforcement authorities. Joint federal-state action in securities issuance and fraud matters occurs freely in some states, rarely in others. The S.E.C. is a member of both the National Association of Railroad and Utility Commissioners and the National Association of Securities Commissioners.

These statutory provisions for "coöperation" with the states were implemented by a written agreement adopted unanimously by the National Association of Railroad and Utilities Commissioners and the Federal Power Commission in 1936. The agreement states their understanding of the terms of the statute with respect to federal-state collaboration and specifies procedures for undertaking joint action.[71] The tenor of the agreement is apparent from one of its statements:

> "It is understood . . . that the Federal Power Commission or any State Commission will freely suggest coöperation with respect to any proceeding or matter affecting any public utility subject to the jurisdiction of said Federal Power Commission and of a State Commission, and concerning which it is believed that coöperation will be in the public interest."[72]

Joint action between the levels in the consideration and adoption of rules with respect to electric utility accounting, records, and reports has occurred freely. At the same convention which adopted the agreement with respect to procedure, the National Association of Railroad and Utilities Commissioners adopted a uniform system of utility accounting drafted in consultation with, and having terms in agreement with, the system adopted by the Federal Power Commission.[73] By 1937, twenty-one state commissions had adopted the association-approved system, and by 1938, twenty-seven had adopted it.[74] Consequent to these adoptions, the federal Commission was able to say, in the latter year, that, in consequence of the federal rules and the state adoptions, over ninety per cent of the electric industry—on the basis of assets and revenues—was then required to maintain uniform accounts.[75] Consultative adoption and promulgation of rules for electric utility property classification, for report forms, and for preservation by utilities of records have followed from year to year, with the committee on statistics and accounts of the National Association, as well as the individual state commissions, consulting with the federal agency at all steps. Following the enactment of the Natural Gas Act in 1938, similar negotiations and agreements for uniform records for gas utilities began to take place.[76] It is indicated that information derived from the reports based on these jointly planned rulings passes freely from level to level for the use of regulatory authorities.[77]

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[70] 49 *Stat.* 853.

[71] *Proceedings*, 1936, pp. 266–75.

[72] *Ibid.*, p. 269.

[73] *Ibid.*, pp. 49–56; Federal Power Commission, *Annual Report*, 1936, pp. 8–12.

[74] Only thirty-eight of the states had authority over private electric utility rates in 1935. Federal Power Commission, *Annual Report*, 1936, p. 22.

[75] *Ibid.*, 1937, p. 5; *ibid.*, 1938, pp. 3–4, 14.

Like the F.C.C.- and S.E.C.-prescribed accounting systems, the rules issued by the Power Commission call for the restatement of utility accounts upon an original cost basis. The Commission has created a field unit to verify original cost studies submitted by utilities. The Commission says that whenever possible its field agents collaborate with the staffs of the relevant state commissions in making these verifications.[78]

The elaborate statutory provisions for joint boards composed of representatives of the states to which formal cases might be assigned for original hearing have apparently gone unused. The joint hearing device in which representatives of the states sit with members of the federal Commission has, however, been used in several cases, especially since 1938, in both electricity and natural gas cases. In fiscal 1940, the state commissions of ten different states participated in such joint hearings. In additional cases, states and municipalities intervened in important cases before the federal agency to advocate their interests. Particularly in matters involving rates for natural gas service, state and local government agencies have joined forces with the federal Commission for comprehensive investigations of the rate structures and operations of the utility companies. Thirteen such investigations were completed during fiscal 1940 or were in progress at the close of the year. Upon some occasions, federal personnel has been loaned to state regulatory agencies.[79]

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[76] *Ibid.*, 1939, pp. 18–19.

[77] By rule, within the authority of the federal act, the Commission is requiring annual reports—in a form arrived at by collaboration with representatives of the states—from each "private, municipal, and public corporation engaged in generating, transmitting, or distributing electricity," and having annual operating revenues of over $50,000. For state or local government utilities, this constitutes an interlevel reporting relationship. All reports cover approximately ninety-eight per cent of the electric utility industry, and are available to the state commissions, as are analyses compiled from them. *Ibid.*, 1938, pp. 11–12, 16–17.

[78] *Ibid.*, 1939, p. 20.

[79] *Ibid.*, 1940, pp. 11–12, 61–62, 64.

SUMMARY

The associative activities between these regulatory bodies on the federal and state levels present several identifiable patterns. One of these is the written agreement stating conditions of collaboration which exist in all the cases described except the Securities and Exchange Commission. (The agreement among bank examiners is apparently more properly a statement promising uniform independent action than an agenda for joint action.) In a sense, these correspond to the state plans submitted and approved under the grant programs, but are different in that they are negotiated by the state officials collectively, through their Association, and in that they have no terminal date. Another distinction is that the agreements among the regulatory agencies do not establish an acting relationship. Rather, they state the conditions upon which and the procedures by which active relationship will be established.

Another of these patterns, related in part to the first, is that of the joint planning (or other consideration) of separate or joint action by the officials of the two levels through the device of the joint conference. This may occur as a meeting of federal officials with the representatives of a single state, of a group of states, or with a committee—selected through the official association—representing collectively large numbers or all of the states. The meetings of the official association are, in a practical sense, joint conferences, the officials of both levels having membership. The joint conference may consider a specific local situation and attempt to formulate a joint policy for its treatment, or it may propose a national uniform policy and procedure, as in the case of plans for the records which the regulated shall keep and report. Uniformity in accounting and other records had for some time been sought by interstate administrative agreements, but with only limited success.

A third pattern is that of the joint hearing in which representatives of a single state or a group of states, or state officials representing collectively a group or all of the states, sit with the federal commissioners in the administrative adjudication of a particular issue. In the determination of the federal issue, the state representatives are nominally acting in an advisory capacity, although practice has tended to institutionalize the understanding that the state representatives be heard fully and that, in case of disagreement, the position of the state representatives be given publicity. As originally conceived and used, this device was appropriate in cases in which the state had before it for hearing the intrastate aspect of the same case which the federal agency was hearing in its interstate aspect. Thus used, it involves the compilation of a joint record and the making of determinations in agreement, if possible. Obviously, in cases in which the state officials represent states collectively, they cannot make determinations in state cases, and the setting of a complementary state hearing has not been regarded as necessary to the successful use of the device, even when direct representation exists. In collective representation on these hearings, the provisions for constituting the state committee call for regional representation, regions coinciding with "rate areas" in railroad cases. Joint hearings have been used in railroad, telephone, telegraph, electric power, natural gas, and motor carrier matters.

Each of the above patterns of relationship, although present in some degree in the new agencies, went through its period of invention and partial development before 1933 in the I.C.C. railroad regulatory activities. The following patterns have had their incidence, or at least their prominent development in interlevel public service enterprise regulation during the last nine years.

The joint board device, authorized first in the Communications Act of 1934, but derived from drafts of the Motor Carrier Act, is the striking innovation of the decade in interlevel regulatory practice. The novel character of this pattern is the delegation—mandatory in some motor carrier matters—of original administrative adjudication to a board made up of state officials from the states concerned in the particular interstate commerce at issue. The Communications and Power Commissions have not yet used the device, but the I.C.C., in its motor carrier enforcement, for which the device was originally intended, has followed this pattern in hundreds of cases. Though inexperience with the device and the necessity for its immediate wide use have produced some complaint from both levels, there is no indication that it will, at the choice of the administrators, be discarded.

Not novel in interlevel administration, but used increasingly during the recent period, were various practices in the interlevel transmission of information. The S.E.C., F.C.C., and F.P.C. have made available their stores of information from the extensive reporting systems they have set in motion, from their analyses of reported data, and from their special studies. State commissions, on the other hand, have made available to the federal agencies files and briefs on state cases. In these activities, there seems to be the freest of interaction. In some degree, information with respect to specific instances in the form of complaints, or otherwise, passes in both directions freely. Loan of personnel, though in a limited degree, has also operated in both directions between the states and new regulatory agencies.

At least very significant portions of the interlevel collaboration anticipated in the enactments of the decade have been realized, though some of the provisions have not been effectuated. It is to be recalled from the early pages of this article that the statutory position of the states in the federal regulation of public service enterprises occurred in large measure as a result of demands of state administrators. It then becomes relevant to know the concepts which state administrators entertain as to their "position" in the administration of American utility regulation.

An uncommon view among state officials is that expressed by a relatively young commissioner, who, in a discussion of collaboration under the Communications Act, said:

> "Now my thought is this, that no matter what we say here, and no matter what is said in the law, I will bet you dollars to doughnuts that before very many years pass by the state commissions will have only a small part of their present jurisdiction in the field of telephone regulation. . . . We are all tied together so closely in all of our dealings, in every phase of human conduct, that we are naturally coming more and more to realize the necessity of a more centralized control of those communication agencies which extend from one corner of this land to the other."[80]

And, to paraphrase his further remarks, "effective regulation" will require federal control.

It has been the tradition of the state commissioners to be jealous of their jurisdictions and fearful of the loss of segments of authority. The extreme form of this point of view, now less frequent than formerly, is found in the statement of a commissioner who was arguing with the president of the National Association for reconsideration of resolutions designed to facilitate interlevel action:

> "I want to say not only to you but to the entire Association, I am not obstreperous, but I am obligated to myself, Mississippi, and God Almighty to try and get a little wider severance between states' rights and the Federal Government in things that appertain definitely and strictly

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[80] National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935, pp. 429, 430.

to intrastate matters. And I just feel after it is all over that maybe I am voting to strengthen those chains that have been riveted upon us rather than striking them off."[81]

A third point of view, and one which apparently tends to gather adherents, is that of the commissioner who said, in referring to the tendencies in federal-state relations:

> "The time has come when, if the states are going to be effective—I emphasize the word 'effective' —units of government, they not only have got to participate in these matters of regulation, but they have got to give the very best that they have to it. . . . If we are going to preserve the proper functions of the states, we have got to get into this thing in dead earnest. . . . We have got to meet judgment with judgment, experience with experience, skill with skill."[82]

The last commissioner doubtless expresses both the preference of the majority of state commissioners for continued significant participation in the procedures and some of the conditions for this continuance. Prediction as to this continuance should probably weigh heavily the accomplishments in interlevel associative administration during the decade, although keeping in mind the obstacles to successful state competition in the skill markets.

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[81] *Ibid.*, 1938, p. 213.

[82] *Ibid.*, 1935, p. 441.

PARTY MEMBERSHIP IN THE UNITED STATES, II

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In spite of the recent loosening of the membership or affiliation requirements in Illinois and a few other states,[98] the general tendency throughout the development of party regulation has been toward greater strictness in this respect, toward more effective protection of the party organization against the independent voter with a careless party conscience. This is indicated, in the first place, by the turn toward an official definition and administration of these membership tests. That is, the parties are no longer left free to determine their own membership rules as they please, but these rules are to an increasing extent prescribed by state law and administered by state officials. Secondly, the tests of party membership have become, on the whole, more complex and more comprehensive, and therefore more difficult to evade—the closed primary has become more and more tightly closed. Thirdly, there has been a drift from the challenge to the enrollment or registration system, and, in general, legislation or other official action which requires greater care by the voter and the candidate in the selection of his party, and which imposes greater difficulty in changing his party affiliation.[99]

The increasing independence of party during recent years has brought with it serious problems for the party organizations, and legislative attempts, more or less successful, to deal with those problems in such a way as to protect especially the major party organizations and thus preserve the two-party system. In Minnesota, for example, a well-organized independent group which had as its program the principles of the Nonpartisan League, and which cared nothing at all for the Republican party, in 1920 filed a complete slate, headed by Dr. Henrik Shipstead for governor, for nomination in the Republican primary. Having been defeated in that primary, the same group thereupon filed as independents in the following election, thus revealing their own lack of any inherent loyalty to the Republican party and forcing the Republicans into a double contest. The narrow victory of the regular Republicans[100] taught them the necessity of protecting their party against invasion by such irregulars, and the next legislature enacted a provision forbidding any person who ran in a party primary from running independently in the following election.[101] This required candidates or groups with loose party convictions to decide before the primaries and once for all in any election year what they really were politically, whether members of a party or independents—they could not be both. The result in Minnesota was the organization of the Shipstead group into the Farmer-Labor party, and an abandonment of their previous efforts to "bore within" the Republican party and capitalize on its prestige with Minnesota voters.[102]

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[98] During the period 1936–39, all tests of party affiliation were eliminated in Idaho, Michigan, North Dakota, and Utah, these states turning to the open primary. See Louise Overacker, in this REVIEW, Vol. 34, p. 501 (June, 1940).

[99] For a summary of these tendencies, see Margaret A. Schaffner, "Primary Elections; The Test of Party Affiliation," *Wisconsin Legislative Reference Department, Comparative Legislative Bulletin*, No. 13 (Aug., 1908); Miller McClintock, "Party Affiliation Tests in Primary Election Laws," in this REVIEW, Vol. 16, pp. 465–467 (Aug., 1922); and R. E. Manning, "Party Affiliation as Prerequisite for Voting at Primaries," *Library of Congress, Legislative Reference Service* (Dec. 13, 1932).

The Minnesota provision was adopted by other states,[103] and in various ways attempts have been made to meet the problem of the independents. In New York, the legislature in 1937 passed the so-called Berg bills, the salient provisions of which would have imposed severe restrictions on the operations of independents in that state by a drastic increase in the number of signatures required on independent petitions (for the 1938 elections, from 12,000 to 56,000 for state-wide offices, from 7,500 to 56,000 for city-wide offices), by limiting to three weeks the time during which independent petitions might be circulated, and by disqualifying party primary voters from signing such independent petitions. These bills, although vetoed by Governor Lehman,[104] were a significant indication of the growing resentment against the very loose system in New York, and of the increased feeling that the party organizations needed protection against those who had no real interest in them.[105]

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[100] J. A. O. Preus, the regular Republican, was nominated over Dr. Shipstead by a plurality of less than 13,000 in a total vote of 320,000, and elected over Shipstead by a plurality of about 130,000 in a total vote of nearly 800,000. *Minnesota Legislative Manual* (1921), pp. 100–101, 526 [insert]. The election would certainly have been much closer but for the Harding landslide of 1920.

[101] *Minnesota Election Laws* (1922 ed.), p. 60 [Sec. 371].

[102] From 1922 to 1938, this Farmer-Labor party was strikingly successful in Minnesota, controlling the state in whole or in part. It lost heavily in 1938, and in 1940 Senator Shipstead, elected three times previously as a Farmer-Laborite, abandoned that party and was reëlected as a Republican.

[103] Cf. Colorado law of 1927: "No person who has been defeated as a candidate in a primary election shall be eligible as a candidate for the same office in the next ensuing election." *Colorado Session Laws*, 1927, p. 325 [Sec. 5].

[104] Text of veto in *New York Times*, Apr. 28, 1937, p. 17.

Another problem arises out of the occasional effort of independents to use in some way the name of an established party, presumably in order to confuse the voter and gain support. In Illinois, in 1926, in view of the widespread protest over the regular party nominations for the United States Senate—that of the notorious Frank L. Smith by the Republicans and of George L. Brennan, the Chicago boss, by the Democrats, a leading citizen of Illinois, Hugh S. Magill, announced his independent candidacy. Mr. Magill filed for a place on the ballot, however, under the designation of Independent Republican, and objections were made on behalf of the Republican State Committee. After a hearing, the state election board[106] unanimously ruled that the legally recognized political parties were "entitled under the law to the protection of the party name or designation chosen by such parties, and that a fair construction of the election laws of the state does not warrant the use of such established party designation, in whole or in part," by independent candidates. "We agree," said the board, "that such practice should not be employed." At the same time, the board refused to order Mr. Magill's name off the ballot, on the ground that on this occasion the objections had been made so late as to foreclose an opportunity for independents to file "under a proper and wholly distinct party appellation," and also on the ground that the publicity through these proceedings "has so fully advised the voters of the state that Republicans or Democrats will not on this particular occasion be confused or misled by the appellation adopted, but, on the contrary, will find no difficulty in casting their ballots for the regular nominees of their respective parties. . . ."[107]

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[105] In 1930, a bill was introduced in the New York legislature which would have required a member of one party seeking the nomination of another party to secure twice the usual number of signatures to his petition ("twice the number of enrolled voters of the party involved"), and to file a statement of his affiliation with a party other than that whose nomination he was seeking. *New York Times*, Feb. 15, 1930.

[106] Composed of Secretary of State Louis L. Emmerson, Attorney-General Oscar Carlstrom, and State Auditor Oscar Nelson, all Republicans.

[107] Text of opinion in *Chicago Tribune*, Oct. 20, 1926, p. 1, c. 1. This ruling applied also to the candidacy of James H. Kirby, who similarly filed as an Independent

A somewhat similar situation arose in the same year in New York, in that a former state senator and a "dry," Franklin W. Cristman, because of the nomination of "wets" by both major parties, filed as an independent candidate for the United States Senate, but under the designation of Independent Republican. The Republican State Committee protested Mr. Cristman's use of the word Republican, pointing out the confusion likely to result in the minds of many voters and emphasizing that if the precedent were established in this case, some one later might go still farther and use such a combination as Regular Republican or Regular Democrat. The Secretary of State, Mrs. Florence Knapp, as the responsible election official in New York, ruled that Mr. Cristman might not use the word Republican, but that he might use an abbreviated form, and hence his candidacy appeared under the designation "Independent Rep."[108]

In 1938, another particularly complex case of confused party membership arose in New York in that Congressman John J. O'Connor, for some time a leading Democratic Representative in Congress and at the time chairman of the powerful House Committee on Rules, was "purged" by President Roosevelt and defeated for the nomination in the Democratic primary, but was nominated by the Republicans and by an independent "Andrew Jackson party." During the campaign, however, Mr. O'Connor circulated literature referring to himself as a Democrat, and this his Democratic opponent, Mr. James H. Fay, sought to enjoin, apparently basing his suit on a provision incorporated into the New York law after the Cristman incident, prohibiting independent candidates from running under the name of any recognized political party in whole or in part.[109] The court held, in a somewhat ambiguous opinion, that the law had the "laudable purpose of not confusing the voter," and that Mr. O'Connor might not use the word "Democratic" in his campaign literature, but that he could not be prevented from writing to his constituents and informing

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Democrat, but whose candidacy was less important than that of Mr. Magill in view of the dominance of the Republican party in Illinois at that time.

[108] *New York Times*, Oct. 10, 1926. Mrs. Knapp apparently based her ruling in part on a statutory provision which permitted the use of an abbreviated party name on the ballot, but such use was permitted only if the full party name contained more than fifteen letters, and provided the abbreviated form contained not more than eleven letters. *New York Election Law* (1922), sec. 20.

[109] See *New York Election Law* (1941), sec. 137, par. 3.

them that he still considered himself a Democrat and a member of the Democratic party.[110]

Many other incidents could be mentioned that have resulted in party practices, administrative rulings, judicial decisions, and legislation dealing with the problem of the invasion and use of a party organization by persons not genuinely its members nor interested in its welfare. These have varied considerably in detail, but in general the tendency has been toward the principle stated most clearly in the Montana statute: ". . . Every political party and its regularly nominated candidate, members, and officers, shall have the sole and exclusive right to the use of the party name and the whole thereof, and no candidate for office shall be permitted to use any word of the name of any other political party or organization than that of and by which he is nominated. No independent or non-partisan candidate shall be permitted to use any word of the name of any existing political party or organization in his candidacy. The names of candidates for public office nominated under the provisions of this law shall be printed on the official ballots for the ensuing elections as the only candidates of the respective political parties for such public offices in like manner as the names of the candidates nominated by other methods are required to be printed on such official ballots."[111]

In view of the loose rules with respect to membership in the major parties, and the failure to distinguish clearly between loyal membership and mere voting affiliation, the strength in actual membership of these major parties cannot be accurately determined and becomes very difficult even to estimate. Such an estimate might be based, in the first place, on active work for the party. As a keen observer of American politics has pointed out, "there is no such thing as a political census or registry,"[112] but nevertheless various estimates have been made of the number of active party workers. James Bryce made an early estimate of

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[110] *New York Times*, Nov. 5, 1938, p. 6, c. 7.

[111] *Election Laws of Montana* (1940 ed.), p. 48 [sec. 639]. In 1940, 39 states required candidates to be members of the party whose nomination was sought, and in only five states (California, Maine, New York, Vermont, and Massachusetts for certain offices) might candidates run under more than one party (or non-party) designation. See Arthur Harris and Carl Uhr, "Direct Primary Elections," University of California, Bureau of Public Administration, *1941 Legislative Problems*, No. 3 (March 31, 1941), esp. Table I.

[112] Frank R. Kent, *Political Behavior*, p. 7.

500,000 for all parties, divided about equally between the Inner Circle, "the persons who make political work the chief business of life, for the time being," and the Outer Circle, "men engaged in some trade or profession who interest themselves in politics and work for their party without any definite hope of office or other pecuniary aim;"[113] and Ostrogorski, in his classic comparison of our party organization to a military system, estimated the "regular army" to consist of from 800,000 to 900,000 men (members of local committees) and about 50,000 officers (members of higher committees), to which might be added the "volunteer forces" of 1,500,000 or 2,000,000 voters enrolling in campaign clubs, thus making up "the enormous total" of 3,500,000 to 4,000,000, or "one militant, entering heart and soul into the fray, to every four or five electors."[114]

That Ostrogorski's, and even Bryce's, estimates may have been unduly optimistic as to the extent of party interest and activity is suggested by the estimate of 500,000 made by Frank R. Kent for 1928; and this figure, said Kent, "includes not only all the workers in the political machines but all the office-holders, county, city, state and federal, and all the interested attachés, leaders, bosses, sub-bosses, contributors, observers, factors, and influences, overt and covert. This leaves approximately 119,000,000 people to whom politics is practically a closed book."[115] And more recently other competent observers have estimated the usual number of party workers at six per precinct, or about 800,000 for all parties, but which "in times of great excitement and enthusiasm" might be doubled, reaching a total of "over 1,500,000 active partisans occupied with the task of carrying on the campaign of the party."[116]

In estimating the strength of particular parties, one writer points out the misconception involved in the statement that "the Democratic party was strong in 1896," since such a statement evidently has reference to the 6,000,000 who voted for Bryan, whereas, in spite of its being a crusading year, with an unusually active campaign by the Democrats, there was a maximum of a million, or one in six, who "were members of a party organization of any kind." "As a matter of fact," he says, "fifteen or twenty thousand men were members of party committees in that campaign, another ten thousand men took active part in the campaign, and it is estimated that one hundred thousand contributed money and voluntary effort." The same writer estimates that in 1920 the Republican and Democratic presidential candidates were nominated by delegates who represented "altogether perhaps five hundred thousand persons who, because of leisure, money, or interest, had selected one or the other of the two dominant parties as the agency through which to accomplish their desires in government."[117]

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[113] See Bryce's interesting and suggestive discussion in *American Commonwealth* (rev. ed., 1916), Vol. II, ch. 57, "The Politicians," esp. pp. 62–68.

[114] Ostrogorski, *Democracy and the Organization of Political Parties* (1902), Vol. II, pp. 285, 292. In a later edition of this volume, the figures as to the number of party workers were increased, but the ratio of one party worker to every four or five voters was maintained. *Democracy and the Party System* (1910), pp. 165, 170.

[115] Kent, *Political Behavior* (1928), pp. 7–8.

[116] Merriam and Gosnell, *The American Party System* (3rd ed., 1940), p. 146.

It may be significant that responsible party officials are inclined to make even more modest claims with respect to the number of active party workers. Thus, Mr. Homer Cummings, in his report as chairman to the Democratic National Committee on February 26, 1919, stated that after organized efforts had been made to secure active workers for the congressional campaign of 1918, it was possible to compile a list of 47,372 "active Democratic workers" in twenty states, running from 384 in Arizona to 8,170 in Missouri.[118] On this basis, and in spite of the difficulties intimated by Chairman Cummings in securing workers in the other states, probably 100,000 would be a fair estimate for the total number of Democratic workers in the period 1918–20. Such a competent party official as Democratic National Chairman James A. Farley, drawing upon his extraordinarily wide acquaintance with Democratic organizations and workers throughout the country, has also made only very modest claims with respect to the number of active Democrats. "There are more than 150,000 loyal men and women in this country," he wrote, evidently referring to the campaign of 1936, "who are connected with regular Democratic organizations, ranging from 'bigwigs' like national and state committeemen, down through precinct and district captains and canvassers to the local committee workers and other humble folk who pull the doorbells, distribute the literature, and haul the voters to the polls on election day." In other words, fewer than one in two hundred of those who voted the Democratic ticket in 1936 were considered by Chairman

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[117] Robinson, *The Evolution of American Political Parties*, pp. 4–5.

[118] Minutes of Democratic National Committee, in *Official Proceedings, Democratic National Convention, 1920*, Appendix, pp. 476–477.

Farley to be active and loyal Democrats willing to do any work for the party. It may not be surprising that he added this note of warning: "An army is seldom stronger than its infantry forces, and a political army is never stronger than its corps of workers."[119]

If all this seems to suggest that there is little relation, so far as the major parties are concerned, between active work for the party and membership in or voting support of the party,[119a] it may be pointed out that there is at least a beginning of legislation which does suggest the appropriateness of establishing such a relationship. Thus a New Jersey law of 1930 makes party activity both a positive and a negative criterion of party membership by providing that a member of a party committee or a person elected or appointed "as a member of a political party" to any public office or employment, "shall be deemed a member of such political party;" and that membership in any political organization espousing the candidates of any political party makes these persons members of that particular political party and ineligible to participate in the primary of another party during such activity and for a year thereafter.[120]

An estimate of party membership might be based, in the second place, on contributions. That is, it might be assumed that any person who considers himself a member of the Republican or Democratic party would be willing to contribute something to its support, as a member of any other organization usually expects to contribute something to advance the interests of that organization; and, similarly, it might be assumed that a person who does not contribute at all to the financial support of a political party hardly deserves to be considered a member in good standing.[120a]

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[119] Farley, *Behind the Ballots*, p. 193.

[119a] Compare the attitude of minor parties on this point, illustrated by the following: "It is not enough to be a Socialist in sentiment; one must be a Socialist in action. . . . Each party member is expected to carry on Socialist work in whatever organization he finds himself." Roy E. Burt, Executive Secretary of Socialist Party, in *Socialist Handbook* (1937), pp. 9, 11.

[120] *New Jersey Election Law* (ed. 1939), pp. 88–89 [Title 19, ch. 23, sec. 45].

[120a] "May I just say to you, gentlemen, that there are practically 300,000 paying members of your party in the United States today. There is hardly a township in the country where we have not a member anxious to help do the work necessary in a campaign, to the extent not only of giving his time, but in giving evidence of that by having sent you his money. There is a live list on the cards that you can go to at any time and find there is a Democrat in that particular locality who wants to contribute to such an extent that he has already given his money, and you know

This theory of a relation between contributions and membership is a thoroughly accepted feature of minor party organization in the United States. Thus the Socialist party has in its constitution a provision for the regular payment of dues by its members, nonpayment to result in automatic expulsion from the party;[121] and similar provisions are generally found in the constitutions or rules of the other minor parties.[122] The active and loyal membership of these minor parties can therefore be quite accurately determined on the basis of the extent to which the regular dues are paid. The reports of the American Labor party show, for example, that in 1936 more than 320,000 persons in New York State contributed an average of twenty-six cents each to the campaign fund of that party, that no individual contribution exceeded $250, and that the largest source of the party's income was membership fees of fifty cents each for 55,617 individual members, and ten cents each for 240,686 members, of affiliated organizations. The party membership of 296,303 thus indicated corresponded very closely to the party vote of 274,924 cast at the election.[123]

The major parties have not, however, developed any system of dues from their members, but have relied principally on voluntary contributions. If such contributions were taken as a criterion of active membership, the results would show that in 1920—the Republican landslide year—there were only 4,429 Republicans in Missouri, 2,115 in Michigan, 440 in New York, and 91 in Ohio; at the same time, there were 352 Democrats in Ohio and in 1922 about 17,000 in New York.[124] According to the best estimates, the number

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he is there with his heart also." Statement of Treasurer Wilbur Marsh to Democratic National Committee, Feb. 26, 1919. *Proceedings, Democratic National Convention, 1920*, Appendix, p. 470.

[121] Under the party's 1920 constitution, for example, the dues were fixed at not less than $1.50 a quarter, distributed in certain proportions to the national, state, and local organizations. More recently, changes were made in the amounts and methods of assessment. *Socialist Party Constitution* (1920), Art. II, sec. 6, Art. IV, sec. 10, Art. IX, secs. 6–7 (leaflet copy); *ibid.* (revised 1937), Art. XI, in *Socialist Handbook* (1937), pp. 74–75.

[122] Socialist Labor Party Constitution (1920), Art. VIII, in *Reports of National Convention of Socialist Labor Party, 1920*, p. 17; Articles of Association of the Nonpartisan League, sec. 10, in Howard, *The Leaders of the Nonpartisan League*, pp. 54–55; Resumé of State By-Laws and Rules of American Labor Party, in *American Labor Party Handbook* (1937), p. 19.

[123] See summary of the party's financial report in *New York Times*, Oct. 26, 1936, p. 6, cc. 1–2; and election statistics in *New York Red Book* (1940), p. 547.

[124] Pollock, *Party Campaign Funds*, pp. 76, 81.

of Republicans who contributed any money at all directly to the national treasury of their party was 2,600 in 1912, 34,205 in 1916, 50,777 in 1920, 90,227 in 1924, 143,749 in 1928, 39,950 in 1932, 84,770 in 1936, and 39,169 in 1940. Similarly, there were, on this basis, 90,500 national paying Democrats in 1928, 26,581 in 1932, 54,818 in 1936, and 37,998 in 1940.[125] Other estimates have placed the total number of paying Democrats as high as 200,000 in 1916, 300,000 in 1918–19, and 600,000 in 1936,[126] and of paying Republicans as high as 600,000 in 1936, and even more in 1940.[127]

Although these figures make it apparent that there has not been for the major parties any significant relationship between membership and contributions, it is important to note that there is in the leadership of these parties a growing appreciation of the desirability of such a relationship. That must have been to some extent in Mr. Bryan's mind when he initiated, in 1908, the so-called Dollar Campaign, urging that the rank and file of Democrats be asked to pay a dollar, and only a dollar, toward the expenses of the campaign, rather than that large contributions from a small number be sought.[127a] By 1932, even the Republicans, who theretofore had generally appealed for financial support to a limited number of wealthy persons, organized a so-called "Small-Contributions Drive,"[128] which by 1939 became in New York State even a Penny Drive, the purpose of which was probably as much to interest a large number of people in the party as actually to raise money.[129]

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[125] These figures are compiled by Louise Overacker in her excellent studies, "Campaign Funds in a Depression Year," in this REVIEW, Vol. 27, pp. 769–783 (Oct., 1933), esp. pp. 772–773; "Campaign Funds in the Presidential Election of 1936," *ibid.*, Vol. 31, pp. 473–498 (June, 1937), esp. pp. 481–482; "Campaign Funds in the Presidential Election of 1940," *ibid.*, Vol. 35, pp. 701–727 (Aug., 1941), esp. pp. 717–718. The figures are admittedly incomplete since they include only contributors to the respective National Committees, and not to state organizations nor to such national organizations as the Roosevelt Nominators in 1936 or the Willkie Clubs in 1940.

[126] Pollock, *op. cit.*, pp. 68, 70. See also report of Wilbur Marsh, Treasurer of the Democratic National Committee, Feb. 26, 1919, in *Official Proceedings, Democratic National Convention*, 1920, p. 740; and Louise Overacker, *op. cit.*, Vol. 31, p. 482 (June, 1937). Miss Overacker's figure of 600,000 includes 350,000 Democrats who attended Jackson Day dinners.

[127] Statement (for 1936) by Ernest T. Weir, chairman of Republican Finance Committee, Mar. 16, 1940, in *New York Herald-Tribune*, Mar. 17, 1940, Sec. 1, p. 15, c. 1. John Hamilton, then chairman of the Republican National Committee, stated that there were 607,000 Republican contributors in 1936, and added that there was "no reason in 1940 why there should not be 1,000,000." Quoted in *New York Times*, May 2, 1939, p. 24, c. 3. Miss Overacker makes no estimate with respect to the Republican total in 1940, but does say: "It is not unlikely that more voters contributed to Willkie's campaign than to that of any Republican candidate in history." *Op. cit.*, Vol. 35, pp. 717–718 (Aug., 1941).

[127a] Compare the statement of National Committeeman Arthur F. Mullen (Neb.) to Democratic National Committee, Feb. 26, 1919: "Now, Mr. Jamieson (Assistant Treasurer) has collected the campaign funds . . . and he has collected that money

In 1937, the Republican National Chairman boasted about the increased number of contributors, especially of small contributors, to the party treasury, obviously thinking of its importance in respect to the active interest in and loyalty to the party associated with a convinced and more or less permanent membership. "It is most encouraging to us at headquarters," he said, "and it should be a source of gratification to all members of the Republican party, that persons of small means in increasing numbers, and very frequently, as their letters show, with very real sacrifice, are expressing through their contributions their faith in the beliefs and activities of the party."[130] Chairman John Hamilton, in voicing his optimistic expectation of 1,000,000 paying Republicans in 1940, said: "That

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from the rank and file of the Democrats of the country, and that is the place to collect campaign funds. From personal experience, in the state in which I live, I would rather have each man pay a dollar apiece than have one man pay $100, because there is a certain amount of psychology in the matter of contributions. The individual man putting in his dollar instantly has an interest in the matter. The policy of Mr. Jamieson during the last three years has been a policy not only of collecting funds, but of collecting a general organization. He knows the men who have sufficient interest in politics and he gets their names in the various parts of the country, and they contribute money to support the party. Those are the men who will do the work." *Proceedings Democratic National Convention, 1920,* Appendix, p. 469.

[128] See *New York Times*, Sept. 18, 1932, sec. 1, p. 28, c. 4.

[129] The plan, initiated by the New York State Republican Women, Inc., was to distribute 80,000 miniature elephant banks, into which "millions of pennies" would be dropped for the 1940 campaign fund. *New York Times*, Mar. 7, 1939, p. 2, c. 2. Cf. editorial comment: "It may be suspected that this call for cents is also a bit of political strategy. In their days of adversity, the Democrats never admitted that the Golden Calf was sound veal. For them no purple feasts. They were plain people, hating pomp and foreign kickshaws. Austere Jeffersonian Democrats have noted with pain that in power Democrats eat and drink like the Republican minions of the Money Power. Now the Republicans are the plain people. They look sadly at the high price of Democratic banquets. They deplore the raising of money to pay campaign debts by dinners at fifty or one hundred dollars a head. Beef and beans for the Republicans. Leave to the soft campanian Democrat his terrapin and his wine. So the Penny Drive is a reproach to the plutocrats in the other tent." *Ibid.*, Mar. 9, 1939.

[130] Statement by William R. Castle, Acting Chairman, in *New York Times*, June 9, 1937, p. 6, c. 4.

will be the greatest force to destroy the political propaganda that we are a party of economic royalists";[131] and Mr. Willkie, in thanking a New York committee for its success in 1940 in gathering 153,000 contributions from the eight metropolitan counties—five times more than on any previous occasion—said: "You already have proved that the Republican party is the party of the people."[132]

As a matter of fact, responsible leaders of the Republican party have in recent years taken definite steps to establish something like a permanent membership list for the party and to put such membership on a regular dues-paying basis. Thus, with the reelection of Chairman John Hamilton after the disastrous campaign of 1936 and the immediate need of paying off the deficit of over $900,000 resulting from that campaign, it was proposed that the new finance committee should set up a system of "sustaining members" on a four-year basis, that is, members who would "pledge themselves to subscribe so much a year over a period of four years." This would, it was agreed, "assure sufficient money to run the affairs of the party between campaigns," and also tend to emphasize the character of the party as a party of the "masses" rather than of the "extremely wealthy."[133]

Within a year, such a system of dues-paying membership was set up by the national organization, and appeals were made to party leaders throughout the country to secure the members necessary to make the system effective, Mr. C. B. Goodspeed, the national

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[131] Quoted in *New York Times*, May 2, 1939, p. 24, c. 3. Mr. Ernest T. Weir, then chairman of the Republican Finance Committee, also referred to the tendency within the party toward broadening the base of its financial support as a "healthy situation and one that should prevail," declared that he would make every effort "to continue and further this trend," and therefore not only welcomed any contribution, "whether the contribution be $5,000, $20, $10, or even $1," but also accepted for the Republican party the proposed Bankhead amendment to the Hatch Act limiting individual contributions to $5,000. *New York Herald-Tribune*, Mar. 17, 1940, sec. 1, p. 15, c. 1.

[132] *New York Times*, Nov. 3, 1940, sec. 1, p. 41, c. 1. For the general trend in both parties with respect to the number of contributors, see the articles by Louise Overacker, previously cited. With respect to 1940, she concludes that "the Democratic party has returned to its Jeffersonian tradition and is once again the party of 'the little fellow'. In contrast to this, the small contributor played a less important rôle in the Republican party in 1940 than in 1936." See this REVIEW, Vol. 35, pp. 716–717 (Aug., 1941).

[133] Charles R. Michael, in *New York Times*, Dec. 19, 1936, p. 9, c. 1; and Arthur Evans, in *Chicago Tribune*, Dec. 19, 1936, p. 13, c. 3.

Treasurer, issuing the following explanation of the plan:

> "To enable the Republican national committee and the national Republican congressional committee to carry out a continuous program and to bring about the participation of lay Republicans in the work of the party, the following plan of financing has been adopted. State finance committees are to be organized in the various states to obtain the largest possible number of sustaining members of the Republican party, contributing annually to the support of their political party as they do to their religious, charitable, and fraternal organizations. A national finance committee is to be formed, comprised of the chairmen of the various state finance committees. It is contemplated that this committee will hold regular meetings and keep continuously informed of the work of the national committee, so that they in turn can report to the members of the state committees. In this way the lay members of the party will be brought into closer coöperation with the political organization and participate in the work. It is believed that if a systematic campaign is carried on continuously to build up a sustaining membership, sufficient income can be provided to meet the operating expenses of the national and congressional committees, liquidate the deficit of 1937, finance the congressional campaign in 1938, and, during 1938 and 1940, accumulate funds for the next presidential campaign."[134]

There is also some legislation incorporating, at least by inference, this principle of a relationship between party membership and party contributions. The New York statutes have for thirty years (since 1911) included a provision authorizing each party committee to "prepare rules for the government of the party within its political subdivision, which may include provisions for the payment of dues, and that failure to pay them shall be cause for removal by the committee."[135] In New Jersey, the legislature of 1930, although not yet requiring dues or contributions from party members, did make contributions a test of party membership by providing that "any voter who, within one year preceding any primary election, has contributed toward the campaign funds of a political party, shall not be eligible to vote in the ballot box of any other political party at such primary election."[136] With this beginning, it seems altogether likely that further legislation along this line may be expected in the future.

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[134] *Chicago Tribune*, Aug. 12, 1937, p. 7, c. 1. This plan was formally adopted by the Republican National Committee on Nov. 5, 1937, and Senator Hastings (Del.) was quoted as stating that it should bring in from $3,000,000 to $5,000,000. See accounts in *Chicago Tribune*, Nov. 6, 1937, p. 12, c. 1; and *New York Times*, Nov. 6, 1937, p. 4, c. 8.

[135] *Laws of New York* (1911), Vol. 3, p. 2680 [ch. 891, art. 3, sec. 38]; cf. *New York Election Law* (1941), p. 5 [sec. 15]. The provision has remained substantially the same, with only a slight change in phraseology in 1916.

[136] *New Jersey Election Law* (1936), p. 143 [Art. XXII, par. 310, sec. 45]. This repeats the provision of 1930.

A third, and probably the most accurate basis, for estimating the actual membership of the major parties is the party enrollment or registration, where such enrollment or registration is provided for. Attention has already been called to the increasing use, in connection with the party primaries, of the enrollment system as a means of determining the party affiliation of the voter and his consequent right to vote in a particular party primary.[137] This enrollment system, used in some form by more than twenty states, requires the voter, before the primary or election, to register his party preference or affiliation, this registration becoming a matter of public record.[138]

Such an enrollment clearly seems to most voters a much more solemn and responsible commitment to a political party than does the alternative method of an oral declaration at the primary (especially since in practice this declaration is frequently not called for), or merely voting with a particular party at an election, and hence is likely to be taken much more seriously and to represent more accurately the voter's real party convictions.[139] The National Secretary of the Socialist party, Mr. Travers Clement, in his report for 1940, pointed out that "the usual method of determining the numerical strength or weakness of an American political party . . . is the use of registration figures"; and that while this was the gauge used particularly for the Republican and Democratic parties and was not the Socialist idea of "enrolled membership," nevertheless "most citizens who register Socialist consider themselves automatically members of the Socialist party."[140] Similarly, it may be said that most citizens who register Republican or Democratic actually do consider themselves Republicans or Democrats, respectively, whereas it has been amply demonstrated that voting a party ticket, or even holding office under a party administration, is no such indication of party membership. Thus, Secretary of the Interior Harold Ickes, after having served for four years in the cabinet of a Democratic President, and after having accepted designation as a delegate to the Democratic National Convention of 1936, apparently still did not consider himself a Democrat, for, in reply to a question on the point, he said: "I'm going as the individual that I am here [in the cabinet]. I didn't have to declare myself a Democrat for that."[141] Similarly, Secretary of Agriculture Henry A. Wallace, a registered Iowa Republican when appointed to the Roosevelt cabinet in 1933, although he was reported to have voted Democratic since 1928, did not formally change his party membership until the spring of 1936, when he signed the papers required by the Iowa law and became a Democrat in name as well as "a Democrat in feeling."[142] This recent conversion of Secretary Wallace to Democracy undoubtedly contributed to the reluctance of the Democratic leaders to accept him as their vice-presidential candidate in 1940.[143]

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[137] See this *Review*, Vol. 36, pp. 30–31 (Feb., 1942).

[138] A typical party enrollment system is that of Pennsylvania, where the statutes provide that the regular registration held at stated periods before the spring primary and before the general and municipal elections is to include a designation of the voter's political party; permits this party enrollment to be challenged, in which case the voter must take an oath that he voted at the last election for a majority of the candidates of the party with which he desires to enroll; provides a method of cancelling and changing the party enrollment; allows an enrolled party member to vote at the primary of his party without challenge, but expressly forbids him to participate in the primary of any other political party. See New Registration Laws of 1937 (revised and adapted to permanent registration), in *Pennsylvania Manual*, Vol. 37 (1937), pp. 339–407. For comparison, see Connecticut law of 1909, in *Republican Handbook of Connecticut, 1916*, pp. 187–202; and *New York Election Law* (1941 ed.), pp. 116–129 [esp. secs. 171–172, 183–184.]

[139] This is suggested by the pertinent, even though facetious, remark of a prominent professor of law: "I have often voted for Democrats, but I have never sunk so low as to register with the Democrats."

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[140] See *Report to the Socialist National Convention, 1940* [mimeographed copy], p. 3.

[141] During the preliminary discussions concerning the Illinois delegation to the Democratic National Convention, the question was raised "whether Ickes, who has been a Republican and a Bull Mooser, had joined the Democratic party," and it was pretty clear that the Democratic leaders in Illinois agreed to his selection only because it was particularly requested by Sen. James Hamilton Lewis. *Chicago Tribune*, May 1, 1936, p. 4, c. 1; May 2, p. 6, cc. 2–3; May 6, p. 4, c. 2.

[142] Wallace's right to serve as a delegate to the Democratic National Convention of 1936 was seriously questioned by Iowa Democrats in view of his Republican enrollment, and he was not chosen as a delegate; he changed his party after the delegates were selected. *Chicago Tribune*, Apr. 3, 1936, p. 10, c. 3; Apr. 28, p. 5, c. 2. (Facsimile of Wallace's change of party affiliation in latter issue.)

[143] "I appear here to second the nomination of a *real* Democrat, and to tell you, my friends, we want to carry the ticket in November down in Missouri, and we can't do it with a Republican running for Vice-President of the United States. (Applause and cheers.) . . . Let the world know that this is a convention where we voted for President Roosevelt and drafted him because as thinking men and women we wanted him for President of the United States. Let us show the United States and the world that as thinking men and women we want a Democrat to run with a Democrat in November. (Applause and cheers.) . . . " J. V. Conran (Mo.), seconding the

The party enrollment figures, where these are available, are quite revealing of the party situation. Those for New York, for example, show that state to have been essentially a Republican state until 1932, although frequently electing Democrats to office and continuously electing Democratic governors since 1922.[144] These figures show that thousands of voters who were willing on occasion to vote the Democratic ticket, in whole or in part, did not thereby consider themselves Democrats at all, but continued to enroll as Republicans. Thus, in 1920 the number of enrolled Republicans was nearly two million and exceeded the Democrats by nearly 850,000; but at the same time the Republican candidate for Governor (Nathan L. Miller) polled a vote below that of the party enrollment by more than 300,000. The Republican party in New York reached its peak of enrolled membership in 1940, with well over two and a half million registered members, but meanwhile the Democratic party had since 1920 increased by leaps and bounds, by 1928 had reduced its inferiority to about 225,000, became in 1930

TABLE II

COMPARISON OF MAJOR PARTY ENROLLMENT AND GUBERNATORIAL VOTE IN NEW YORK

Year	*Republican*		*Democratic*		*Excess of Enrollment*	*Excess of Vote*
	Enrollment	*Election*	*Enrollment*	*Election*		
1920	1,763,504	1,335,878	922,170	1,261,812	Rep. 841,334	Rep. 74,066
1922	1,267,436	1,011,725	1,130,944	1,397,670	Rep. 136,492	Dem. 385,945
1924	1,773,051	1,518,552	1,284,407	1,627,111	Rep. 488,644	Dem. 108,557
1926	1,483,780	1,276,137	1,344,574	1,523,813	Rep. 139,206	Dem. 247,676
1928	2,176,009	2,104,629	1,950,781	2,130,193	Rep. 225,228	Dem. 25,566
1930	1,552,153	1,045,341	1,544,740	1,770,342	Rep. 7,413	Dem. 725,001
1932	2,012,999	1,937,963	2,413,699	2,534,959	Dem. 400,700	Dem. 847,439
1934	1,521,417	1,393,638	2,256,107	2,201,729	Dem. 734,690	Dem. 808,091
1936	2,037,344	2,180,670	3,266,748	3,018,298	Dem. 1,229,404	Dem. 837,628
1938	1,930,858	2,302,505	2,442,142	1,971,307	Dem. 511,284	Rep. 331,198
1940	2,647,148	3,027,478†	3,191,387	2,834,500†	Dem. 544,239	Rep. 192,978*

† No governor elected in 1940, hence the presidential vote is given.
* See note 145.

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nomination of Speaker Bankhead, in *Proceedings, Democratic National Convention, 1940*, p. 228. Cf. seconding speeches of John H. Morehead (Neb.), Francis W. Durbin (O.), and Maury Hughes (Tex.), in *ibid.*, pp. 229, 232–233.

[144] See Table II below. New York has had a party enrollment system for more than forty years (since 1898). The party enrollment figures, published regularly since 1920 and occasionally before that, are found in *N.Y. Legislative Manual* and *N. Y. Red Book* for the respective years. For the earliest and most recent statutes, see *Laws of New York, 1898*, Vol. 1, pp. 331–359 (ch. 179, esp. secs. 3, 11); *N. Y. Election Law* (ed. 1941), pp. 90–135 (Art. 7, esp. secs. 171–172, 183–184).

virtually equal, and since 1932 has been the majority party in membership, enrolling in 1936 more than three and a quarter million members and exceeding the Republicans in that year by nearly a million and a quarter. Since 1936, the Republicans have regained votes, and on that basis they became the majority party in 1938 and 1940.[145] But the Democrats remain the dominant party in strength by more than half a million, with the indications for the future not so clear.

A more detailed examination of the party enrollment since 1920 shows that this shift in party strength was particularly notable in New York City, where the number of enrolled Republicans decreased from a peak of 643,630 in 1920 to a low of 320,075 in 1934, and again increased to a new high of 758,385 in 1940; while the number of enrolled Democrats increased from its low point of 531,167 to a peak of 2,289,213 in 1936 and to 2,273,367 in 1940. It further shows that although the Democrats have since 1920 quite consistently gained party members throughout the state, their vote is generally considerably in excess of their party enrollment, while the reverse is commonly true of the Republicans.[146] In other words, voters who were in large numbers dissatisfied with Republican candidates and prepared to vote the Democratic ticket still considered themselves Republicans, enrolled accordingly, and should be considered as Republicans in spite of their Democratic vote.[147] It may be added that, while New York Republicans have been ready to bolt their party on the governorship in particular, Democrats have been inclined to bolt on the presidency.[148] But, at any rate, loyalty to the party has in New York been firmer than loyalty to the ticket, and it is this loyalty to the party which, to the extent that it can be determined, should be taken as the measure of party membership and strength.

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[145] The Republican vote exceeded the Democratic vote by 331,198 in 1938 and by 192,978 in 1940; Governor Lehman and President Roosevelt carried the state only because of the American Labor vote of 419,979 and 417,418 in those respective years.

[146] An analysis of the period 1920–26 shows that in 1922 the Republican enrollment exceeded the Republican vote for governor in only one of the 62 counties in the state, and never during these years in more than 26; while the Democratic enrollment was in 1922 below its gubernatorial vote in 61 counties, and was never below in less than 53. *N. Y. Red Book, 1928*, pp. 375–378.

[147] Note this pertinent comment on the party enrollment for 1926: "These figures show that the State in 1926 was Republican by a majority of 139,226. If they are an index of party strength, they indicate that Governor Smith must have received in the election that year about 200,000 votes of Republicans and independents. . . . " *Ibid.*, p. 366.

[148] Even the popular Governor Smith, as the presidential candidate in 1928, "showed surprising weakness, measured by enrollment, in all five counties of New York City." *Ibid., 1930*, p. 421.

In other states having party enrollment systems, the enrollment figures similarly show the distinction between membership in a party and voting a party ticket, and the greater hesitancy of the voters to leave their party than to abandon its leading candidates. In Pennsylvania, long the bulwark of the Republican party, the Republicans have maintained their lead in enrolled membership throughout the course of the New Deal, although losing the principal offices in 1934, 1936, and 1938. In 1934, about 90,000, and in 1936 nearly 300,000, more Pennsylvanians voted the Democratic ticket than were enrolled members of the Democratic party, and if attendance on the party primary were considered the criterion of party attachment, the discrepancy would be considerably greater.[149] On the other hand, the figures show that Pennsylvania voters did in large numbers, but more gradually than in New York, change their party conviction and party membership, so that the Democrats steadily increased their enrollment from 657,329 in 1926 to 2,209,276 in 1938, or an increase of more than a million and a half, while during the same period the Republicans increased their enrollment by less than 100,000. From a state overwhelmingly dominated by a single party, Pennsylvania slowly but steadily has become a genuine two-party state, which is probably much more representative than before of the political differences among the voters,[150] and which is probably conducive to somewhat better political morals and somewhat better government.[151]

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[149] For the party enrollments, as well as the primary and election vote, see *Pennsylvania Manual* for the respective years. The enrollment for the major parties only, during the period 1925–37, is found in the *Manual*, Vol. 83 (1937), p. 166. Cf. following comment with respect to the situation in 1933: "Democrats here [Pittsburgh] and in many other parts of the State feel that a fundamental change has begun in Pennsylvania; for many of the Republicans who voted for Roosevelt last Fall are now registering Democratic. . . . While hundreds of thousands of Republicans voted for the Democratic candidate for Governor in 1930, they continued to enroll as Republicans. . . . It is to be borne in mind that the Roosevelt vote in Pennsylvania, only 157,592 below that of Hoover, compared with Republican pluralities of nearly 1,000,000 in the two preceding Presidential contests, was on a registration or enrollment more than three to one Republican. In Allegheny county [Pittsburgh], which went for Roosevelt by more than 37,000, the enrollment was Republican by nearly nine to one." William T. Martin, in *New York Times*, July 2, 1933, sec. 4, p. 6 E, cc. 4–5.

Turning briefly to the minor parties for purposes of comparison, it may be noted that these regularly have very strict membership requirements in contrast with the loose requirements of the major parties. In order to join the Socialist party, for example, a person must make formal application for membership, must meet certain requirements of age and residence,[152] must declare his belief in and support of the party principles as determined by the appropriate party authority, must agree not to participate in the activities of any other political organization or in any way aid in the election of any but Socialist candidates for office (unless by special consent of the appropriate party committee),[153] and must contribute regularly to the financial support of the party.[154] Other minor parties have similar, if not identical requirements.[155]

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[150] "The Republican leaders . . . have figured it out that tens of thousands of Pennsylvanians who have voted with the Democrats in the last eight years while registering their affiliation with other parties, now [1936] have registered Democratic. This, they argue, will help reduce the margin of Democratic votes in excess of the party registration. The figures boil down to this, according to the Republicans: they come nearer than at any time since before the depression to showing the actual relative strength of the two major parties in Pennsylvania." Lawrence E. Davies, in *New York Times*, Oct. 25, 1936, sec. 4, p. 6 E., c. 6.

[151] "Pennsylvania has become a two-party state, with a promise of better government in the future. When the State registration and vote was one-sided and the minority party stood no chance whatever, the people of the Commonwealth had little voice in the government." *Pennsylvania Manual*, Vol. 83 (1937), p. 166.

[152] These permit non-voters to be members, the age requirement for membership being eighteen, although members under twenty-one are not permitted to take part in nominations of party candidates for public office; the residence requirement is residence in the United States merely, with no stated period; for many years, there was a requirement that a person be a citizen or immediately apply for citizenship, but the 1937 constitution contains no provision with respect to citizenship.

[153] In 1927, Jacob Panken, the only Socialist on the Municipal Court of New York City, declined to accept a Republican nomination for reëlection, saying: "I am the candidate of the Socialist Party. My own convictions and the policy of the Socialist Party do not permit my acceptance of the nomination from any other political party. . . . If my services to the people merit reëlection . . . I want to be reëlected as a Socialist." *New York Times*, Aug. 31, 1927.

[154] Socialist Party Constitution (adopted Mar. 29, 1937), esp. Arts. III, X, XI, in *Socialist Handbook* (1937), pp. 62–78.

[155] American Labor Party By-Laws and Rules, in *American Labor Party Handbook* (1937), p. 19; Workers [Communist] Party Constitution, esp. Arts. 3, 15–16, in *Report of Special House Committee on Un-American Activities* [Dies Committee] (H. Rept. No. 2, 76th Cong., 1st Sess.), Appendix, Pt. I, pp. 310–319 (1940). [This

There is thus established for these minor parties what may be called "dues-paying membership," to be carefully distinguished from the enrolled membership provided for by law in some states, and of course from mere voting affiliation at the polls.[156] It is the dues-paying members who control the party machinery, and who actually determine the party principles, policies, and program.[157] On this dues-paying basis, the Socialist party grew from a membership of about 10,000 in 1900 to a peak of about 118,000 in 1912, then declined, at first gradually but after the World War very sharply, to almost its original number in 1922 and to only about 16,000 in 1932.[158] The Communist party, on this same basis, probably had a membership of 10,000–15,000 in the decade 1920–30,[159] while the Socialist Labor party claimed only 2,500 in 1924 and 2,000 in 1928.[160] This rather pitiful membership is in striking contrast with the vote of these parties, small as that is,[161] and even with the "enrolled membership" under the statutes.[162] It represents, how-

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part of the Dies Committee Report is generally known as the Red Book, not to be confused with the *New York Red Book*, the manual previously cited.]

[156] "The State office of the Party will not be satisfied with membership results until the organization has enrolled at least ten per cent of the citizens who cast their votes for the American Labor Party." *American Labor Party Handbook* (1937), p. 13. Attention has previously been called to the fact that in the case of this party there was in 1940 a close correspondence between the dues-paying membership and the vote, although if individual membership only were counted the membership was approximately twenty per cent of the vote. *Supra*, p. 249.

[157] See Sait's distinction between the "dues-department organization" and the "legal organization" of the Socialist party. Sait, *American Parties and Elections* (ed. 1927), p. 314, n. 3; (rev. ed., 1939), p. 395, n. 3. Cf. this pertinent item in respect to the New York Socialist convention, Apr. 18, 1936: "Today's convention was devoted to the task of setting up the new party State organization on the basis of the dues-paying membership, as distinct from the purely legal machinery represented by the State committee elected in the primary." Joseph Shaplen, in *New York Times*, Apr. 19, 1936, sec. 1, p. 17, cc. 1–2.

[158] Figures in *Literary Digest*, Sept. 20, 1919; James Oneal, "Changing Fortunes of American Socialism," *Current Hist.*, Apr., 1924, esp. p. 92; *Report of National Secretary to the Socialist National Convention, 1940* (mimeographed), p. 3.

[159] *Report of House Committee to Investigate Communist Activities in the United States* [Fish Committee] (H. Rept. No. 2290, 71st Cong., 3rd Sess., Jan. 17, 1931), pp. 15, 94. See also membership tables for 1922–1925, in *Report of 4th National Convention of Workers* [Communist] *Party* (1925), pp. 27–41.

[160] *Minutes and Reports of 16th National Convention of Socialist Labor Party, 1924*, pp. 94, 101; *ibid., 17th Convention, 1928*, p. 59.

[161] E.g. *Socialist:* (1912) membership 118,045, vote 897,011; (1920) membership 26,766, vote 919,799; (1932) membership 16,000, vote 884,784. *Communist:* (1932) membership ca. 12,000, vote 102,991; *Socialist Labor:* (1928) membership 2,000, vote 21,644.

[162] For example, the Socialist dues-paying membership in New York State was

ever, a thoroughly cohesive group in each case, the individual members of which agree on principles and are ready to subject themselves loyally to a considerable degree of party discipline in order to promote those principles;[163] and the influence of such a loyal, disciplined, and cohesive group is probably very much greater than its mere numbers might suggest.[164]

It need not be concluded from all this that the major parties should adopt the plan and methods of the minor parties. Indeed, it is doubtful whether American opinion would tolerate such a departure from the traditional looseness of our two-party system; and, in fact, a congressional committee has already indicated that, in order to be truly American, a party must be loosely organized, with complete freedom on the part of the party members to do as they like at any time, to refuse to work for the party, to refuse to contribute to its support, to vote against its candidates, to quarrel with its principles, and yet presumably to remain within the party organization as members in good standing.[165] That committee was

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estimated at about 4,000 in 1936, while the statutory enrolled membership was 20,029, and the gubernatorial vote 96,233. *New York Times*, Apr. 19, 1936, sec. 1, p. 17, c. 1; *N. Y. Red Book, 1937*, pp. 429–431. It should be noted that this was a year of bitter dissension between right- and left-wing Socialists, which no doubt caused a loss of membership, and which, in fact, raised problems of rightful membership that cannot be examined in this article.

[163] The Socialist Party Constitution empowers the local organizations to expel or otherwise discipline members, subject to appeal to State and National Committees, and "subject to the uniform conditions of membership and discipline laid down by the National Executive Committee on the basis of national convention decisions." (Art. III, sec. 5; Art. X, sec. 1.) The Communist party provisions are much more stringent on this point. (Art. 15). For an interesting attempt to explain the meaning and importance of party organization and discipline, see Report of National Executive Committee, in *Minutes and Reports of 17th National Convention of Socialist Labor Party* (1928), pp. 69–79.

[164] The National Secretary of the Socialist party claimed, in his report for 1940, that "it is possible to have a relatively small party in terms of year-round membership, which is highly effective," and pointed out that the party polled almost as large a vote in 1932, with one-seventh of the membership, as it did "at the peak of our membership strength in the radical 'Golden Age' of 1912." *Report, 1940, op. cit.*, p. 3. Cf. Report of Socialist Labor National Executive Committee in 1924, *op. cit.*, p. 16.

[165] "It is essential to understand in considering the subject that the Communist party of the United States is not a political party in the true American sense. . . . Under our political party system, any citizen having proper residential qualifications cannot be denied the privilege of joining a party nor can he be expelled from it. He is not even bound to vote for the candidates of his own party; in truth, under the American system of parties the initiative rests wholly with the individual and assures his complete freedom of political action. . . . It will be observed, therefore,

apparently unaware of the numerous developments to which attention has been called in this paper, having as their purpose the protection of the major party organizations against those with extremely loose party consciences—developments which have gone so far in several states as to introduce the conception of party disloyalty or party treason, on the part of party officers at any rate, and to provide methods of ousting disloyal or traitorous members from responsible party positions, if not from actual membership in the party.[166] These developments seem to require some better definition or understanding of what is meant by a loyal Republican and a loyal Democrat. It ought to be possible, as it would seem to be desirable, to make our major party organizations somewhat more closely knit and responsible than they now are, in order that their declarations of platform and principle may be something better than glittering generalities, may represent something like the actual views of the respective groups, and may offer some fairly clear alternative programs to the voter. Somehow or other it should be possible to have a party system which would make it clear whether Wendell Willkie or Senator Nye is the better Republican, whether Franklin D. Roosevelt or Senator Wheeler is the better Democrat.

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that stringent conditions are imposed upon the [Communist] party membership which are wholly foreign to the American conception of political organization. . . . " *Report of Special House Committee for Investigation of Nazi and Other Propaganda* (H. Rept. No. 153, 74th Cong., 1st Sess.), pp. 21–22.

[166] In Pennsylvania, the Republican party has provided that whenever a member of the Republican National, State, or other committee, or a delegate to a Republican convention, is charged "with not being a qualified Republican elector, or who opposes or is about to oppose the Republican Party or any of its candidates, or who neglects or refuses to attend to the duties of his office," he is to be given a hearing by a committee of "three qualified Republican electors," and if the charges are substantiated he is to be removed from his office. *Rules of the Republican Party of Pennsylvania* (adopted 1921, amended 1932), Rule I, sec. 3. In Colorado, the Democratic State Central Committee was empowered to hear charges against and to remove party state or county committeemen or officers "for disloyalty to the party, failure, refusal or neglect to perform the duties of the office, including failure to support any party candidate, . . . failure to comply with the rules of the party, or for any political reason which in the opinion of the State Central Committee is for the best interest of the party." *Plan of Organization and By-Laws of the Democratic Party of Colorado* (adopted 1922), Art. III, Sec. 9. In New York, the statutes provide that after notice and hearing "a member of a party committee may be removed by such committee, for disloyalty to the party or corruption in office." *N. Y. Election Law* (ed. 1941), p. 5 [Art. 2, sec. 16]. This provision dates back at least to 1911; similar provisions are found in statutes or party rules in other states.

CONSTITUTIONAL LAW IN 1940–1941

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1940

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The membership of the Supreme Court underwent but one change during the 1940 term. Mr. Justice McReynolds retired on February 1, 1941. Chief Justice Hughes retired on June 2, 1941, after the term had closed. The vacancies thus created were both filled during the summer recess. Mr. Justice McReynolds, a Tennessee Democrat, was Attorney-General in President Wilson's first cabinet, and was appointed to the Court in 1914. He has long been rated one of the most conservative of the justices and was a consistent and bitter opponent of the New Deal and all its works. Mr. Justice Van Devanter, who had retired in 1937, died on February 8, 1941.

A. QUESTIONS OF NATIONAL POWER

I. LEGISLATIVE POWER

1. COMMERCE POWER

1. The Fair Labor Standards Act Held Valid. It had been widely assumed that the Court would uphold the constitutionality of the Fair Labor Standards Act of 1938; but this does not lessen the importance of the decision itself, United States v. Darby,[1] which puts the capstone on the Court's recent interpretation of the scope of the commerce clause, and squarely reverses the highly controversial case of Hammer v. Dagenhart.[2] The Fair Labor Standards Act sought to abolish substandard labor conditions in the industries which produce goods for the interstate market. It forbade three principal things. First, it forbade the employment of workmen in the making of goods "for interstate commerce" at less than prescribed minimum wages, and for more than prescribed maximum hours. Second, it forbade the shipment in interstate commerce of goods in the production of which these wage and hour standards had been violated. Third, it forbade the shipment in interstate commerce of goods made in establishments in which "oppressive child labor" had been employed, essentially the provision of the Keating-Owen Child Labor Act of 1916, held void in Hammer v. Dagenhart. The act further required all employers subject to the act to keep detailed records of wages, hours, and other conditions of employment to facilitate the enforcement of the law.

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[1] 312 U.S. 100, 1941.

[2] 247 U.S. 251, 1918. See Professor T. R. Powell's comment in this REVIEW, Vol. 13, p. 47.

The administration of the statute was placed in the hands of an Administrator of the Wage and Hour Division in the Department of Labor. Darby shipped in interstate commerce lumber produced by labor which was paid less and worked longer than the act allowed, and he failed to keep the required records. He alleged that the act was unconstitutional on three grounds: first, it is beyond the scope of the commerce clause, which does not warrant the federal regulation of the conditions of manufacturing goods; second, it violates the Tenth Amendment by invading the reserved powers of the states; third, it violates the due process clause of the Fifth Amendment. The district court held the act invalid on the first and last of these grounds.

The Court, without dissent, held the act constitutional. In his opinion, Mr. Justice Stone covered four points. First, Congress may validly forbid the shipment in interstate commerce of goods produced under substandard labor conditions. The commerce power, in the words of Marshall in Gibbons v. Ogden,[3] "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution." The act does not invalidly trespass on state power merely because "its motive or its consequence is to restrict the use of articles of commerce within the states of destination." It is designed to give effect to the "congressional conception of public policy that interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions, which competition is injurious to the commerce and to the states from and to which the commerce flows." The motives and purposes which lead Congress to regulate interstate commerce "are matters for the legislative judgment, upon the exercise of which the Constitution places no restriction and over which the Courts are given no control." Thus Congress enjoys power which is "plenary to exclude any article from interstate commerce subject only to the specific prohibitions of the Constitution." This cannot be reconciled with the decision in Hammer v. Dagenhart,[4] and that case, therefore, "should be and now is overruled." In Hammer v. Dagenhart, "a bare majority of the Court, over the powerful and now classic dissent of Mr. Justice Holmes," limited the power of Congress to exclude articles from interstate commerce "to articles which in themselves have some harmful or deleterious property—a distinction which was novel when made and unsupported by any provision of the Constitution," and which "has long since been abandoned." The power of Congress over interstate commerce is the same in extent and in character as the power of the states over intrastate commerce.

Secondly, Congress may validly impose on employers wage and hours restrictions with respect to all workmen engaged in making goods for the interstate market, even though these workmen are admittedly not "engaged in interstate commerce." The Court has long held that Congress may validly deal with local or intrastate activities when they are so related to interstate commerce and so affect it "as to be within the reach of the power of Congress to regulate it." This is the situation here. Congress is trying to prevent "the spread of substandard labor conditions through the use of the facilities of interstate commerce for competition by the goods so produced under the prescribed or better labor conditions." A reasonable and effective way of doing this is to forbid entirely the making of any goods for interstate commerce under labor conditions which are substandard. "The means adopted . . . for the protection of interstate commerce by the suppression of the production of the condemned goods for interstate commerce is so related to the commerce and so affects it as to be within the reach of the commerce power." The Fair Labor Standards Act is in no way forbidden by the Tenth Amendment. Hammar v. Dagenhart, it will be recalled, rested in part on the theory that for Congress to strike at child labor through the commerce power was to violate the Tenth Amendment by using a delegated federal power to accomplish an undelegated and therefore unconstitutional end. "The grant of authority," it was said, "over a purely federal matter was not intended to destroy the local power always existing and carefully reserved to the states in the Tenth Amendment . . . . " This same doctrine was relied upon to invalidate the Agricultural Adjustment Act in United States v. Butler.[5] This doctrine is bluntly discarded by Mr. Justice Stone, who, it will be remembered, filed a powerful dissent in the Butler case. He here observed: "The [Tenth] Amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the Amendment. . . . From the beginning and for many years the amendment has been construed as not depriving the national government of authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end . . . Whatever doubts may have arisen of the soundness of that conclusion, they have been put at rest by the decisions under the Sherman Act and the National Labor Relations Act which we have cited."

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[3] 9 Wheaton 1, 1824.

[4] *Supra*, note 2.

The two remaining points of the opinion were dealt with briefly. To require the employer to keep adequate records of wages, hours, and other conditions of labor to aid the Administrator in determining whether the law has been violated is clearly "an appropriate means to the legitimate end." Finally, the act does not violate the Fifth Amendment. It is now firmly established that reasonable legislative regulations of wages and hours of labor do not deny due process of law. There is no want of due process in applying the statute to men and women alike. Also, the act "is sufficiently definite to meet constitutional demands."

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[5] 297 U.S. 1, 1936. See this REVIEW, Vol. 31, p. 254.

The decision in the Darby case is of tremendous importance. Together with the decisions sustaining the Wagner Act, it assures to Congress under the commerce clause full power to protect and promote the interests of the overwhelming bulk of American labor. It also clears the constitutional atmosphere with respect to the Tenth Amendment. That the reserved powers of the states could be soundly invoked to limit the scope and exercise of the delegated powers of Congress had never been a persuasive doctrine. That ghost seems now to be effectively laid.

In Opp Cotton Mills, Inc., v. Administrator,[6] the Court disposed of a series of attacks on the administration of the Fair Labor Standards Act. It found no invalid delegation of legislative power to the Administrator or to the Industry Committees through whom he worked in prescribing wages and hours. The standards set up in the act for the guidance of the administrative agency are satisfactorily definite. Mr. Justice Stone observed: "The Constitution, viewed as a continuously operative charter of government, is not to be interpreted as demanding the impossible or the impracticable. The essentials of the legislative function are the determination of the legislative policy and its formulation as a rule of conduct. Those essentials are preserved when Congress specifies the basic conclusions of fact upon ascertainment of which, from relevant data by a designated administrative agency, it ordains that its statutory command is to be effective. The present statute satisfies those requirements." The Court found no lack of due process in the procedure before the Industry Committee, or in the procedure before the Administrator. It found also that the findings of fact of the Administrator were supported by substantial evidence and must therefore, under the statute, be treated as conclusive.

2. Federal Control of Navigable Waters and Water Power. In another series of decisions of great importance, the Court established the plenary control of the federal government over navigable waters and the hydroelectric power derived from them. In so doing, it settled a number of questions on which there had been long-standing uncertainty and dispute. The principal case was United States v. Appalachian Electric Power Co.[7] The facts were as follows: Under the Federal Water Power Act of 1920, it is unlawful to construct a dam for water-power development in a navigable water of the United States without first securing a license from the Federal Power Commission. Such a license, by the provisions of the act, rigorously controls the affairs of the licensee in the matter of service, rates, and profits, and provides for the acquisition by the government of the licensed project at the end of fifty years on payment of the company's "net investment" as defined. It is also unlawful to construct a dam in a non-navigable stream unless the Federal Power Commission, having satisfied itself that the interests of interstate and foreign commerce will not be affected, grants permission. Over a period of years, the Appalachian Company tried to obtain from the Commission either a license or permission to construct a power dam on terms which it was willing to accept, but failed to do so. In 1934, it began building a dam in the New River, which flows through Virginia and West Virginia, and the government thereupon sought an injunction. The company alleged that the New River is not navigable, and that even if it were navigable the conditions which the Commission sought to impose in the terms of the license offered to the company were unconstitutional since they had nothing to do with navigation or with "the protection of the navigable capacity of waters of the United States." Forty-one states joined as *amici curiae* to protest the authority asserted by the Commission.

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[6] 312 U.S. 126, 1941.

[7] 311 U.S. 377, 1940.

Speaking through Mr. Justice Reed, the Court sustained the injunction. It held, first, that the New River is navigable. A commonly accepted test of navigability is that stated in the case of the Daniel Ball[8] in 1871. The Court there said: "Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce. . . . " This test the Court proceeded to modify. It declared: "To appraise the evidence of navigability on the natural condition only of the waterway is erroneous. Its availability for navigation must also be considered." Applying this test of potential navigability or "effect of improvability," the Court concluded that the New River, in spite of existing rapids, shallows, gorges, and other obstructions, is a navigable river, since by the expenditure of a not unreasonable sum of money it could be made navigable in fact. In the second place, the Court held that the government's power over navigable waters is not restricted to control which relates to navigation. The power being exercised is the commerce power, of which control of navigability is but a part. "Flood protection, watershed development, recovery of the cost of improvements through utilization of power, are likewise parts of commerce control. . . . Navigable waters are subject to national planning and control in the broad regulation of commerce granted the Federal Government." It follows that "the license conditions to which objection is made have an obvious relationship to the exercise of the commerce power." Even if there were no such relationship, Congress in the exercise of its plenary power over navigable waters could forbid all obstructions in such waters. It may therefore grant the privilege of building such obstructions on its own terms. In the third place, the company is not denied due process in having to submit under the terms of the license to the government's right to acquire the company's dam and plant at the end of fifty years at less than the "fair value" at the time of the taking. There can be no private property in the flow of the stream, and if the company's property passes to the government at less than its full value, that is but the price which the government may exact for the privilege of building the dam and thus obstructing the stream. The acquisition of these power properties by the federal government in no way invades the sovereignty of the states, since it takes place by the exercise of delegated powers.

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[8] 10 Wallace 557, 1871.

On the question of navigability, Mr. Justice Roberts dissented, joined by Mr. Justice McReynolds. He urged that the Court should have followed the findings of the lower federal court on the facts as to navigability. Nor did he accept the Court's new test of potential navigability through possible improvement. "If this test be adopted, then every creek in every state in the Union which has enough water, when conserved by dams and locks or channelled by wing dams and sluices, to float a boat drawing two feet of water, may be pronounced navigable because, by the expenditure of some enormous sum, such a project would be possible of execution. In other words, Congress can create navigability by determining to improve a non-navigable stream."

It seems clear that by this case the Court has placed on a firm constitutional footing the absolute control of the United States over the water power resources of the country. The practical implications of this are of tremendous importance.

Two other cases involved federal power over navigable waters. In Oklahoma *ex rel* Phillips v. Guy Atkinson Co.,[9] the governor of Oklahoma sought to enjoin the United States from building the Denison Reservoir on the Red River in Texas and Oklahoma as authorized by an act of Congress in 1938. He alleged that the dam will flood some 100,000 acres of Oklahoma land, thereby seriously reducing taxable income; that it will produce power from Oklahoma water to be sold chiefly in Texas; that the dam has been built higher than necessary for flood control in order to generate power for commercial purposes; and that any resulting benefits to the navigability of the Red or Mississippi Rivers are intangible, indirect, and unsubstantial. The Court unanimously upheld the government's power to build and operate the project. The opinion was written by Mr. Justice Douglas. The enterprise is part of a national system of flood control designed to protect commerce on the Mississippi and its major tributaries. The power of Congress extends to the non-navigable tributaries of navigable streams when necessary to protect the navigable rivers. It is for Congress to decide how necessary such regulation is and to plan the details of its execution. Since Congress has effected flood control and improved navigation by this project, it is immaterial that it is also generating power. Dams may be built for several purposes as long as one of them is constitutional, and the valid purpose need not be the primary one. Since Congress has here exercised its commerce power, there has been no invasion of state authority in violation of the Tenth Amendment.

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[9] 313 U.S. 508, 1941.

United States v. Chicago, M. St. P. & P. R. Co.[10] held that federal power to improve navigation extends to the entire bed of a stream, which means all of the land below high-water mark. The railroad, as a riparian owner, had built embankments along the Mississippi, portions of which were placed between high and low water-marks. These did not obstruct navigation. By building a dam to improve navigation, the government flooded this area. The Court held that it was not required to pay compensation for this damage. This is not a taking of private property, since the riparian owner's rights are "subordinate to the dominant power of the federal government in respect of navigation."

2. FEDERAL POWER OVER PRIMARY ELECTIONS

In United States v. Classic,[11] the Court has finally upheld the power of Congress to regulate congressional primary elections. It reached this result by a very roundabout method. Classic was a commissioner of elections in New Orleans. With others, he was indicted in a federal district court for wilfully altering and falsely counting ballots cast in a congressional primary election in that city in 1940. It was charged that Classic had thereby violated two sections of the Criminal Code as follows: Section 19 makes it a crime for "two or more persons [to] conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States . . . "; while Section 20 punishes anyone who "under color of any law, statute, ordinance, regulation or custom, wilfully subjects . . . any inhabitant of any state, territory, or district to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States . . . . " To apply these sections of the Criminal Code to the conduct of Classic is to assume that the right of a qualified voter in a congressional primary election to have his vote honestly and correctly counted is a right secured by the Constitution and laws of the United States. The Court, speaking through Mr. Justice Stone, held that this assumption is correct. The Constitution establishes the right of qualified voters to choose congressmen. Article I, section 2, directs that members of the House of Representatives be "chosen every second year by the people of the several states," while Article I, section 4, after giving the state a general management of congressional elections, authorizes Congress "to make or alter such regulations" by law. The exact nature of the right secured to qualified voters to choose congressmen is determined, therefore, by the laws of the state in which he lives, plus such regulations as Congress may impose. The primary election is a vital part of the congressional election system in Louisiana. It is, in fact, so vital a part of it that a candidate's success in the primary guarantees his success in the final election. It follows that the constitutional right of the voter to "choose" a congressman includes the right to cast a ballot in a congressional primary election and have it counted as cast. "The words of sections 2 and 4 of Article I . . . require us to hold that a primary election which involves a necessary step in the choice of candidates for election as representatives in Congress, and which in the circumstances of this case controls that choice, is an election within the meaning of the constitutional provision and is subject to congressional regulation as to the manner of holding it." By the acts charged against him, Classic interfered with the constitutional right of the citizen to have his vote properly counted in a congressional primary, and he thereby violated the sections of the Criminal Code which forbid the invasion of this right.

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[10] 312 U.S. 592, 1941.

[11] 313 U.S. 299, 1941.

The Court's decision is in conflict with what has been commonly spoken of as the doctrine of Newberry v. United States,[12] decided twenty years ago. Newberry had been convicted of violating the federal corrupt practices act by spending in a senatorial primary campaign more money than the statute allowed. The Supreme Court set aside the conviction. Four justices held that the Constitution gave Congress power to regulate congressional elections, but not congressional primaries. Newberry had not, therefore, committed a federal crime. Four justices held that Congress could validly regulate congressional primaries. The ninth justice concurred in reversing the conviction on grounds having nothing to do with the constitutional issue. The case has often been loosely referred to as holding that Congress has no power to regulate congressional primaries, but Mr. Justice Stone in the present case observes: "The question then has not been prejudged by any decision of this Court."

A vigorous dissent was filed by Mr. Justice Douglas, concurred in by Justices Black and Murphy. He agreed that Congress has power to regulate congressional primaries, but denied that Congress has either intended or accomplished such regulation by the sections of the Criminal Code invoked against Classic. "Civil liberties are too dear to permit conviction for crimes which are only implied and which can be spelled out only by adding inference to inference." It seems unreasonable that Congress "by leaving section 19 of the Criminal Code unmolested for some seventy years has legislated unwittingly on primaries."

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[12] 256 U.S. 232, 1921. See Professor E. S. Corwin's comment in this REVIEW, Vol. 16, p. 22.

The Classic case involved no question of racial discrimination, but the doctrine announced seems to bear directly upon the result reached in Grovey v. Townsend,[13] the last of the Texas Negro primary cases. It was there held that the exclusion of Negroes from voting in the primary of the Democratic party did not deny the equal protection of the laws in violation of the Fourteenth Amendment, because the exclusion was not the result of state action, but of private unofficial action by the party. The case rests on the theory that a party primary is a private enterprise and not part of the election machinery of the state. The Court refused to "confuse the privilege of membership in a party with the right to vote for one who is to hold public office." It is true that certain aspects of the legal status of parties in Texas lent more plausibility to this distinction than might be found in other states. But under the doctrine of the Classic case, the primary election is an integral part of the machinery of elections, and the constitutional right of the citizen to vote in one includes the right to vote in the other. Furthermore, if the right to vote in a congressional primary is a vital part of the constitutional right to "choose" members of Congress, it is reasonable to infer that the right to vote in primary elections is a vital part of the constitutional right to "vote" which the Fifteenth Amendment protects from discrimination on racial grounds. The writer believes that United States v. Classic forecasts the reversal of Grovey v. Townsend.

3. NATIONAL DEFENSE—THE ESPIONAGE ACT OF 1917

Questions relating to the scope and validity of the Espionage Act of 1917 were settled in favor of the government in Gorin v. United States.[14] Gorin, a paid agent of the Russian government, bought from a civilian investigator of the Naval Intelligence Office in California some fifty confidential reports from the files of that office. These related to Japanese activities on the West Coast. The statute is not so indefinite as to deny due process by forbidding the obtaining or delivering of information "connected with the national defense." These words have "a well understood connotation." Nor was it necessary for the government to show that the documents and information secured were to be used "to the injury of the United States." The statute equally forbids the obtaining of information relating to national defense "to be used . . . to the advantage of any foreign nation." No distinction is made "between friend or enemy."[15]

II. JUDICIAL POWER

An unusually large number of cases dealt with federal judicial power and the work of the courts, though few raised questions of general interest.

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[13] 295 U.S. 45, 1935. See this REVIEW, Vol. 30, p. 85.

[14] 312 U.S. 19, 1941.

[15] Bacardi Corporation of America v. Domenech, 311 U.S. 150, 1940, held that a treaty entered into by the United States cannot be overridden by a Puerto Rican statute.

Seven of these[16] may be classed together as cases in which the Court was "mopping up" after its far-reaching decision in Erie Railroad Co. v. Tompkins[17] in 1938, overruling the old case of Swift v. Tyson.[18] In all of these cases, the Court rigidly applied the new rule that the federal courts in cases arising on diversity of citizenship must apply state law as declared by the state's highest court. Failure or refusal to do this in the varying circumstances of these cases was in every instance held improper.

The well-grounded reluctance of the Supreme Court to permit federal courts to enjoin the enforcement of state criminal laws was shown in three cases. In Beal v. Missouri Pacific R. Corporation,[19] the Court refused to sustain such an injunction against the enforcement of a state full-crew law. There was no clear showing of the multiplicity of suits alleged to be imminent or any other irreparable injury. In Watson v. Buck,[20] and Marsh v. Buck,[21] involving state anti-trust actions against ASCAP (American Society of Composers, Authors, and Publishers), it was held that a federal court ought not to enjoin the enforcement of a multi-provisioned state criminal statute on constitutional grounds until the state supreme court has had an opportunity to interpret the statute. To do so in advance of efforts to enforce the separate provisions of the act is "analogous to rendering an advisory opinion upon a statute or a declaratory judgment upon a hypothetical case."

In Sibbach v. Wilson & Co.,[22] the Court held valid certain of the Rules of Civil Procedure for District Courts of the United States which authorize the court to order a person to submit to a physical or mental examination in cases in which his mental or physical condition is in controversy. The plaintiff, seeking to recover damages for alleged bodily injuries, refused to submit to a physical examination when ordered to do so by the court, and was committed for contempt. An act of Congress of 1934 delegated to the Supreme Court the power to prescribe rules of civil procedure for the federal courts. The act provided, however, that "said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant." Is the right to resist a physical examination a "substantive" right? The Court held that it was not. A "substantive" right does not necessarily mean a "substantial" or "important" right. "The test must be whether a rule really regulates procedure," and this one admittedly does so. Furthermore, the rules were submitted to Congress before they became effective and Congress raised no objection to the rule here questioned. It may, therefore, be assumed that it does not violate legislative intent.

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[16] Fidelity Union Trust Co. v. Field, 311 U.S. 169, 1940; Six Companies of California v. Joint Highway Dist. No. 13, 311 U.S. 180, 1940; West v. American Teleph. & Teleg. Co., 311 U.S. 223, 1940; Stoner v. New York Life Insur. Co., 311 U.S. 464, 1940; Vandenbark v. Owens-Illinois Glass Co., 311 U.S. 538, 1941; Moore v. Illinois Central R. Co., 312 U.S. 630, 1941; Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487, 1941.

[17] 304 U.S. 64, 1938. See this Review, Vol. 33, p. 246.

[18] 16 Peters 1, 1842.

[19] 312 U.S. 45, 1941.

[20] 313 U.S. 387, 1941.

[21] 313 U.S. 406, 1941.

[22] 312 U.S. 1, 1941.

Mr. Justice Frankfurter dissented in an opinion in which Justices Black, Douglas, and Murphy concurred. He said: "So far as national law is concerned, a drastic change in public policy in a matter deeply touching the sensibilities of people, or even their prejudices as to privacy, ought not to be inferred from a general authorization to formulate rules for the more uniform and effective dispatch of business on the civil side of the federal courts." So drastic a change in rules ought to be supported by specific legislation.

The rule that the United States may be sued only under the terms of its own consent is strictly applied in United States v. Sherwood.[23] Sherwood recovered a judgment against one Kaiser for some $5,000. Kaiser, it was alleged, was entitled to sue the United States for damages amounting to some $14,000 for breach of a government contract for the construction of a post-office building. Sherwood sought to sue the United States and Kaiser jointly in a federal district court to compel the United States to pay Kaiser, and Kaiser, thereupon, to pay Sherwood. The Court held that the district court had no jurisdiction in such a suit against the government. The jurisdiction of the Court of Claims, embodying the terms on which the United States has consented to be sued, extends only to cases in which the plaintiff brings suit against the government alone, not when joined with any private party. The Tucker Act of 1887 gives to the federal district courts the same jurisdiction over claims against the United States as that given to the Court of Claims. Here the plaintiff has a claim against the government only because he had a claim against Kaiser, and Congress has never consented to suits of this nature.

The power of federal courts to punish for criminal contempt was involved in Nye v. United States.[24] While the case turned on a point of statutory construction, it is, nevertheless, of great practical importance and overrules an earlier much-criticized decision. The facts were as follows: One Elmore brought suit in the federal district court in North Carolina against a firm making and selling a medicine, alleging that his son died from the use of the medicine. He was illiterate, and feeble in mind and body. By the use of liquor and persuasion, Nye induced Elmore to seek to have the case dismissed, and this attempt was made. Nye was cited for contempt of the district court for having attempted to prevent the trial of Elmore's suit on its merits, thus obstructing the administration of justice. He was adjudged guilty and fined. In an opinion by Mr. Justice Douglas, the Supreme Court reversed this judgment. The Court agreed with the trial judge that this was a criminal and not a civil contempt. "A contempt is considered civil when the punishment is wholly remedial, serves only the purposes of the complainant, and is not intended as a deterrent to offenses against the public. The facts of this case do not meet that standard." The crucial issue was whether Nye could be summarily punished for contempt, or whether he should have been indicted and tried by a jury. The answer depends upon the meaning and applicability of two sections of the Criminal Code. One of these, derived from a statute of 1831, contains the proviso: "that the power of the several courts of the United States to issue attachments and summary punishments for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice . . . " The other section provides for the normal criminal prosecution of persons who corruptly or by threats or force seek to obstruct or impede the administration of justice by such means. Nye's offense was committed a hundred miles from where the district court was sitting. The Court held that it was not punishable summarily as a contempt. The words "in the presence of the said courts" and "so near thereto as to obstruct the administration of justice," used in the sections of the code just quoted, have a geographical, not a causal, connotation. This view is supported by the legislative history of the statute, which was passed to curb early judicial abuse of the contempt power. In Toledo Newspaper Company v. United States,[25] decided in 1918, the Court upheld a federal district judge in summarily punishing a newspaper for contempt for having published objectionable comments about the judge and his conduct of pending litigation. Mr. Justice Holmes, joined by Mr. Justice Brandeis, had sharply dissented, and the case aroused wide controversy. This case is now squarely overruled, and the power of federal judges to punish for contempt under existing law is held to extend only to misconduct "in the vicinity of the court, disrupting to quiet and order or actually interrupting the court in the conduct of its business." If Nye is to be punished, it must be under other sections of the Criminal Code and under the normal safeguards of a criminal trial.

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[23] 312 U.S. 584, 1941.

[24] 313 U.S. 33, 1941.

Mr. Justice Stone, with whom Chief Justice Hughes and Mr. Justice Roberts concurred, dissented on the ground that "this Court has hitherto, without dissenting voice, regarded the phrase "so near thereto" as connoting and including those contempts which are the proximate cause of actual obstruction to the administration of justice, whether because of their physical nearness to the court or because of a chain of causation whose operation in producing the obstruction depends on other than geographical relationships to the court." If this long-standing rule is to be changed, it should be done by Congress and not by the Court.

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[25] 247 U.S. 402, 1918. See Professor T. R. Powell's comment in this REVIEW, Vol. 13, p. 236.

III. FEDERAL CIVIL RIGHTS

DISCRIMINATION AGAINST NEGROES IN INTERSTATE COMMERCE

Recent decisions make it clear that the Court will insist that Negroes receive, under Southern segregation laws, accommodations and treatment substantially equal to those given to whites. This was emphasized in the Negro law school case of Missouri *ex rel* Gaines v. Missouri,[26] and the rule is again strictly enforced in Mitchell v. United States.[27] Mitchell, a Negro congressman from Chicago, travelled from Chicago to Hot Springs, Arkansas, on a ticket which entitled him to Pullman accommodations. Upon crossing the Arkansas border, he was compelled to leave the Pullman car and ride in a day coach reserved for colored passengers. The railroad would have refunded the difference between the Pullman and coach fares on demand. He alleged the coach to be inferior to those reserved for white passengers and to be "filthy and foul-smelling." The railroad undertook to provide Negroes with "equal but separate" accommodations required by the Arkansas statute, by allowing Negroes wishing Pullman accommodations to buy drawing-room space at ordinary Pullman rates. On the occasion of Mitchell's journey, however, all the drawing rooms had been previously engaged. Negroes were excluded from the Pullman dining car and observation car. Three months later, the railroad replaced the inferior coaches by modern coaches substantially equal to those reserved for white persons. It was not disputed that the demand for Pullman accommodations by Negroes was very small. Mitchell filed a complaint with the Interstate Commerce Commission charging unlawful discrimination in violation of the Interstate Commerce Act. The Commission dismissed the complaint. Speaking through Chief Justice Hughes, the Supreme Court held unanimously that Mitchell was entitled to relief. While brought under a federal statute, the case presented the same basic issues which would have been involved had Mitchell been seeking relief under the Fourteenth Amendment against discriminatory treatment under state law. He was entitled to seek his relief from the Commission, since the statute forbids inequality of treatment by railroads on grounds of race. He was entitled to complain even though he did not intend to repeat his journey. The act is violated by a single instance of unequal treatment. The test of equality is not met by giving Negroes with first-class tickets accommodations equal to those enjoyed by white persons travelling second-class, nor by allowing such Negro passengers to buy drawing-room space if available. Inequality of treatment is not justified by the negligible number of Negroes who desire Pullman accommodations. The Commission may not sanction the discriminatory treatment on the ground that it will be inconvenient and costly to provide equal accommodations. "The comparative volume of traffic cannot justify the denial of a fundamental right of equality of treatment . . . It is the individual . . . who is entitled to the equal protection of the laws . . . not merely a group of individuals, or a body of persons according to their numbers."[28]

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[26] 305 U.S. 337, 1938. See this REVIEW, Vol. 34, p. 275.

[27] 313 U.S. 80, 1941.

IV. STATUTORY CONSTRUCTION

1. LABOR CASES

1. Cases Under the National Labor Relations Act. Of the seven cases which arose under the Wagner Act, one or two threw new light on the scope of the statute and the powers of the National Labor Relations Board. The most striking of these was Phelps Dodge Corporation v. N.L.R.B.,[29] in which Mr. Justice Frankfurter spoke for the Court. This held it to be an unfair labor practice, within the meaning of the act, for an employer to refuse to hire workmen because of their labor union affiliations, even though he has never employed them before. Previous cases had not gone beyond holding the discharge of workmen for union membership barred by the act. In supporting this new rule, the Court observes: "The course of decisions in this Court since Adair v. United States[30]. . . and Coppage v. Kansas[31]. . . have completely sapped those cases of their authority." These two cases, long and widely criticized, had held unconstitutional federal and state "anti-coercion acts," acts penalizing employer discrimination against union men in hiring and firing. They now pass out of the picture. The Court further upheld the reinstatement of the workmen even though they had in the meantime secured "substantially equivalent" employment. This reinstatement may carry with it back pay, but deduction must be made for wages "wilfully unearned" through refusal by the workmen to accept available employment. While agreeing with the majority on other points, Justices Murphy, Black, and Douglas objected to the Court's rule requiring this deduction from the back pay due to reinstated employees of the amount of "wilfully incurred" loss of wages. Mr. Justice Stone, joined by Chief Justice Hughes, agreed that it is an unfair labor practice to refuse to hire workmen because of union membership, "but it is quite another matter to say that Congress has also authorized the Board to order the employer to hire applicants for work who have never been in his employ and to compel him to give them 'back pay'."

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[28] Walker v. Johnston, 312 U.S. 275, 1941, dealt with points of federal procedure in habeas corpus cases, and also held that due process is denied one convicted of crime upon a plea of guilty without the aid of counsel if he did not voluntarily waive his right of counsel, or if he was deceived or coerced by the prosecutor into pleading guilty. Holiday v. Johnston, 313 U.S. 342, 1941, held that the erroneous imposition of two sentences for a single offense does not constitute double jeopardy.

[29] 313 U.S. 177, 1941. [30] 208 U.S. 161, 1906. [31] 236 U.S. 1, 1915.

In Republic Steel Corporation v. N.L.R.B.,[32] the Board found the company guilty of unfair labor practices, ordered it to discontinue them, to withdraw recognition from a company union, and to reinstate with back pay certain workmen found to have been unlawfully discriminated against by discharge. The order went farther, however, and "directed the company to deduct from the payments to the reinstated employees the amounts they had received for work performed upon 'work-relief projects' and to pay over such amounts to the appropriate governmental agencies." The reinstated workmen would be entitled only to back pay minus their earnings from W.P.A. or similar work-relief projects during the period of their discharge. To require the employer to reimburse the government for the wages paid to these workmen is to assume that the Board may properly punish the employer to this extent for having indirectly imposed an unnecessary financial drain on the government's resources devoted to unemployment relief. Speaking through Chief Justice Hughes, the Court held that Congress has not conferred such power on the Board. The N.L.R.A. is "essentially remedial. It does not carry a penal program declaring the described unfair labor practices to be crimes . . . or provide indemnity against community losses as distinguished from the protection and compensation of employees." Had Congress intended this sort of penalty, it would have said so. "We do not think Congress intended to vest in the Board a virtually unlimited discretion to devise punitive measures." This portion of the Board's order does not seek to effectuate the policies of the N.L.R.A., but "a distinct and broader policy with respect to unemployment." It is therefore invalid. Justices Black and Douglas dissented. "We believe, as did the Board . . . that it may well be said that the policies of the Act will be effectuated by denying to an offending employer the opportunity of shifting to government relief agencies the burden of supporting his wrongfully discharged employees."

In H. J. Heintz Co. v. N.L.R.B.,[33] it was held that the company's refusal to sign a written contract embodying the terms of an agreement with a labor organization was a "refusal to bargain collectively" within the meaning of the statute, and that the Board could order the company to sign.

In N.L.R.B. v. Express Publishing Company,[34] the Board found the company guilty of an unfair labor practice by a refusal to bargain collectively. It issued an order against the continuance of this refusal, and it also ordered the company "to refrain from violating the Act in any manner whatsoever." With three justices dissenting, the Court held the last part of this order too broad. The Board could properly restrain specified unlawful conduct, plus conduct reasonably related to it, but it could not validly include more.[35]

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[32] 311 U.S. 7, 1940.

[33] 311 U.S. 514, 1941.

[34] 312 U.S. 426, 1941.

2. Labor and the Anti-Trust Laws—The Norris-LaGuardia Act. In two cases, the Court clarified and strengthened the protection enjoyed by American labor against either criminal prosecutions or injunctions brought under the federal anti-trust laws. The most important of the two cases was United States v. Hutcheson.[36] The defendants were officers of a labor union. They called a strike because of an employer's refusal to employ the members of their union rather than those of a rival union. This is what is called a "jurisdictional strike." In carrying on this strike, the defendants picketed the employer's plant and urged that union members and their friends refrain from buying his product. The employer, Anheuser-Busch, Inc., is engaged in interstate commerce. The strike naturally affected that commerce. Hutcheson and others were indicted for criminal combination and conspiracy in violation of the Sherman Act. The Court held the statute inapplicable. Mr. Justice Frankfurter wrote the opinion. Early decisions of the Court held the Sherman Act applicable to labor union activities which resulted in restraints of interstate trade. These decisions led Congress to pass, first, the labor sections of the Clayton Act, and second, the Norris-LaGuardia Act. The Clayton Act forbade the issuance of federal injunctions to restrain certain enumerated labor union activities, and further declared these activities not to be "violations of any law of the United States." The Norris-LaGuardia Act narrowed much further the power of federal courts to issue injunctions in labor disputes. Mr. Justice Frankfurter observed: "The Norris-LaGuardia Act was a disapproval of Duplex Printing Press Co. v. Deering[37] . . . and Bedford Cut Stone Co. v. Journeymen Stone Cutters' Association,[38] as the authoritative interpretation of Section 20 of the Clayton Act, for Congress now placed its own meaning upon that section." The two cases mentioned had interpreted the labor immunities of the Clayton Act as extending only to immediate employer-employee relations, and not to sympathetic or jurisdictional strikes. The Clayton and Norris-LaGuardia Acts deal with labor injunctions, not with the criminal liability of labor unions or their officers, but they express the clear intention of Congress to place the normal activities of labor unions beyond the reach of the anti-trust statutes. They place the conduct of the present defendants clearly beyond the reach of any federal injunction. It is reasonable to assume that Congress also intended that such labor union activities should be immune from the criminal sections of the Sherman and Clayton Acts. It would be very strange if "that which on the equity side of the court is allowable conduct may in a criminal proceeding become the road to prison."

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[35] Three cases dealt with N.L.R.B. procedure, especially its handling of the evidence supporting its findings of fact. These were International Association, etc., v. N.L.R.B., 311 U.S. 72, 1940; N.L.R.B. v. Link-Belt Co., 311 U.S. 584, 1941; Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 1941.

[36] 312 U.S. 219, 1941.

[37] 254 U.S. 443, 1921.

[38] 274 U.S. 37, 1927.

Mr. Justice Roberts and Chief Justice Hughes dissented on the ground that the defendants had engaged in a secondary boycott which restrained interstate commerce. Under a long line of decisions, this violates the Sherman Act. If the Norris-LaGuardia Act is to be given the effect of repealing the criminal sections of the Sherman Act as applied to labor unions, this repeal should be by Congress and not by the Court.

A somewhat similar result was reached in Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc.[39] This case arose out of another jurisdictional labor dispute—an A. F. of L. versus C.I.O. controversy. An element in the conflict was the picketing by the A. F. of L. union of the stores in Chicago selling the dairy's milk. The Court held that a labor dispute existed within the meaning of the Norris-LaGuardia Act, even though it was between the dairy and an outside union. The act applies if the employers and employees involved are engaged in "the same industry, trade, craft, or occupation." Here they are all engaged in the milk industry. The Norris-LaGuardia Act is applicable to labor disputes and forbids the issuance of injunctions in them even when violations of the Sherman Act are charged. The act itself makes no such exception to its uniform application, and its legislative history clearly shows that none was intended by Congress.

2. FEDERAL TRADE COMMISSION ACT

In Federal Trade Commission v. Bunte Bros.,[40] the Court refused to allow the Commission to follow the doctrine of the Shreveport Case[41] and to forbid the use of unfair methods in local sales when these result in "a handicap to interstate competitors." The opinion was written by Mr. Justice Frankfurter. Bunte Brothers made and sold candy in Illinois in "break and take" packages, a scheme by which the amount the buyer gets depends on chance. The Commission had barred "break and take" packages as an "unfair method of competition" in interstate commerce. Bunte Brothers did not engage in interstate commerce; they merely competed with those who did. The Commission claimed for itself an authority similar to that exercised by the Interstate Commerce Commission in the Shreveport Case, where the Court upheld the Commission in ordering the discontinuance of purely intrastate railroad rates which resulted in discrimination against interstate commerce. The Court's refusal to sustain the Federal Trade Commission's claim rested on its conclusion that Congress has not granted this wide authority by any provision of the Federal

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[39] 311 U.S. 91, 1940.

[40] 312 U.S. 349, 1941.

[41] Houston, E. & W. Texas R. Co. v. United States, 234 U.S. 342, 1914.

Trade Commission Act, and has also shown from time to time a disinclination to add in this way to the Commission's jurisdiction. "The construction urged by the Commission would thus give a federal agency pervasive control over myriads of local businesses in matters heretofore traditionally left to local custom or local law." This is very different from the "strictly confined authority growing out of railroad rate discrimination." So drastic a change in the Commission's powers should not be made without "a clearer mandate from Congress." "This case presents the narrow question of what Congress did, not what it could do." Justices Douglas, Black, and Reed dissented.

B. QUESTIONS OF STATE POWER

I. THE FOURTEENTH AMENDMENT

1. DUE PROCESS OF LAW

1. Civil Rights. In Cox v. New Hampshire,[42] a state statute requiring a special license with graduated fees for any parade or procession on the public streets was held not to abridge freedom of speech, press, religion, or assembly. The appellants, Jehovah's Witnesses, without obtaining a license, marched through a city street in groups of twenty in single file carrying placards to advertise a meeting. They appealed their conviction under the statute, alleging that it violated the fundamental civil liberties guaranteed by the Fourteenth Amendment, that it gave the licensing authorities unlimited, arbitrary, and discriminatory power, and that it was fatally vague and indefinite. Speaking through Chief Justice Hughes, the Court unanimously rejected all these contentions. On its face, the act is a reasonable police regulation designed to keep order and promote the safe and orderly use of the streets. "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses . . . One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinions." As construed by the Supreme Court of New Hampshire, the act does not give "arbitrary or unfettered discretion" to the licensing board. The board is required to deal with each application for a license by a uniform procedure, a full examination of the facts, and without discrimination. The fee is a reasonable charge to cover the extra police service necessary to maintain public order. The record showed no abuse of authority by the licensing board in this case.

In 1940, the Court held in Thornhill v. Alabama[43] and Carlson v. California,[44] that laws forbidding peaceful picketing abridge freedom of speech and press. In Milk Wagon Drivers' Union v. Meadowmoor Dairies,[45] the Court divided sharply on the application of this general rule to the complicated circumstances of a milk-wagon drivers' strike in Chicago. The dairy sought an injunction to restrain the union from interfering with the distribution of its products. A master appointed by the court to find the facts reported that there had been considerable violence on the part of the strikers and recommended that all picketing, not merely violent acts, should be enjoined. This was ultimately done and the Court, in an opinion by Mr. Justice Frankfurter, sustained the injunction. This sweeping decree is justified on the ground that the acts of picketing were, according to the master, "enmeshed with contemporaneously violent conduct which is concededly outlawed." The violence was not "episodic nor isolated." "And acts which in isolation are peaceful may be part of a coercive thrust when entangled with acts of violence. In such a setting, it could justifiably be concluded that the momentum of fear generated by past violence would survive even though future picketing might be wholly peaceful." The Court denied that this decision qualified the doctrine of the Thornhill and Carlson cases. There, statutes which were bad on their face had to be dealt with and were held void. Here the picketing is enjoined only because it is intimately associated with violence under circumstances which give it a coercive effect.

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[42] 312 U.S. 569, 1941.

[43] 310 U.S. 88, 1940. See this REVIEW, Vol. 35, p. 268.

Mr. Justice Black dissented in an opinion in which Mr. Justice Douglas concurred, and Mr. Justice Reed dissented separately. The disagreement turned mainly on conflicting opinions as to the facts. Mr. Justice Black thought that the record showed no evidence that the picketing was accompanied by violence or that the union officials had indulged in or encouraged violence. Such violence as did occur was not connected with picketing. The injunction, therefore, should restrain the violence, but permit peaceful picketing. Mr. Justice Reed declared: "If the fear engendered by past misconduct coerces storekeepers during picketing, the remedy lies in the maintenance of order, not in denial of free speech. . . . If picketing is prohibited here, the right maintained by Thornhill v. Alabama collapses on the first attack."

The right to picket was sustained, however, in American Federation of Labor v. Swing.[46] Here an outside union sought to unionize Swing's shop. The state court enjoined the picketing of the shop on the ground, among others, that there was no dispute between Swing and his immediate employees. The Court, through Mr. Justice Frankfurter, held that "a state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him."

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[44] 310 U.S. 106, 1940. See this REVIEW, Vol. 35, p. 269.

[45] 312 U.S. 287, 1941.

[46] 312 U.S. 321, 1941.

2. Criminal Due Process. Smith v. O'Grady[47] arose on the following facts. Smith, an uneducated person, was arrested for burglary. He had no lawyer. He alleged that he was persuaded to plead guilty to simple burglary, as he supposed, on the assurance that if he did so his sentence would be not more than three years' imprisonment. He was not shown a copy of the charge. He was then brought before a judge, summarily arraigned, and upon the prearranged plea of guilty sentenced to twenty years in prison. The charge actually brought against him had been "burglary with explosives." He again asked to see the charge, to be allowed to plead not guilty, and to be given counsel for defense. These requests were denied, and "within the hour" he was on his way to prison. The state court denied Smith the right to allege illegal imprisonment through habeas corpus and held that his only relief lay in applying to the state parole and pardon board. The Supreme Court held unanimously that if Smith's charges were true he had been denied due process of law, and that under the circumstances he could not be denied the right of habeas corpus as a means of bringing before the court the question of the alleged denial of his constitutional rights. A similar result was reached in *Ex Parte* Hull.[48] Here a Michigan state prison regulation required all documents in habeas corpus proceedings to be passed upon by various state officials, who, if not satisfied with them, might refer them back to the prisoner. This procedure was held to impair the prisoner's constitutional right to apply to a federal court for a writ of habeas corpus. The court, not the prison authorities, must decide whether the papers are properly drawn.

3. Police Power and the Regulation of Business. The state police power cases in the field of economic regulation may be dealt with briefly. The most interesting is Olsen v. Nebraska,[49] in which a unanimous Court, speaking through Mr. Justice Douglas, held constitutional a Nebraska statute fixing the maximum fees which may be collected by a private employment agency from an applicant for a job. Relying upon Nebbia v. New York,[50] it found no denial of due process of law, and thereby squarely overruled Ribnik v. McBride,[51] decided in 1928, in which the Court held invalid a New Jersey statute fixing the fees of private employment agencies.

Railroad Commission of Texas v. Rowan & Nichols Oil Co.,[52] following recent decisions in analogous cases, upheld a complicated order of the Commission "formulating a method for distributing among well owners the total amount of oil which it then allowed to be produced in the East Texas field." Three justices dissented. The case may be compared with that of the same name decided at the last term.[53]

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[47] 312 U.S. 329, 1941.
[48] 312 U.S. 546, 1941.
[49] 313 U.S. 236, 1941.
[50] 291 U.S. 502, 1934. See this REVIEW, Vol. 29, p. 45.
[51] 277 U.S. 350, 1928. See this REVIEW, Vol. 23, p. 92.
[52] 311 U.S. 570, 1941.

Skiriotes v. Florida[54] upheld a state statute forbidding the use of deep sea diving apparatus for the purpose of taking commercial sponges from the Gulf of Mexico, or the Straits of Florida, or other waters within the territorial limits of the state. The act does not conflict with international law, nor with any treaty or federal statute. It does not deny the equal protection of the laws. It is a proper exercise of the state's police power, and the state may validly forbid its own citizens to take sponges with the aid of diving apparatus, even at points outside the territorial limits of the state.

4. Due Process in State Taxation. In Wisconsin v. J. C. Penney Co.,[55] the Court sharply divided in holding valid the Wisconsin corporate dividend tax of 1935, as applied to a foreign corporation. The tax in issue is described by the statute as a tax "for the privilege of declaring and receiving dividends, out of income derived from property located and business transacted in this state." The rate of the tax is two and one-half per cent of the amount of the dividends, and "such tax shall be deducted and withheld from such dividends payable to residents and non-residents by the payor corporation." In the case of corporations "doing business within and without the state of Wisconsin, such tax shall apply only to dividends declared and paid out of income derived from business transacted and property located" in Wisconsin. The company is a Delaware corporation. Its offices are in New York, and it there votes its dividends, which are paid by checks drawn on New York banks. It was alleged that for Wisconsin to tax these dividends was to tax transactions taking place outside the state, and therefore to deny due process of law. The majority of the Court, through Mr. Justice Frankfurter, held the tax valid. "The practical operation of this legislation is to impose an additional tax on corporate earnings within Wisconsin but to postpone the liability for this tax until such earnings are paid out in dividends." It is an "income tax on corporate income that is paid out." The jurisdiction of the state to tax depends on "whether the state has given anything for which it can ask return." This it has done "The substantial privilege of carrying on business in Wisconsin, which has here been given, clearly supports the tax, and the state has not given less merely because it has conditioned the demand of the exaction upon happenings outside its own borders. The fact that a tax is contingent upon events brought to pass without a state does not destroy the nexus between such a tax and transactions within a state for which the tax is an exaction."

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[53] 310 U.S. 573, 1940. See this REVIEW, Vol. 35, p. 275.

[54] 313 U.S. 69, 1941.

[55] 311 U.S. 435, 1940.

A sharp dissent was recorded by Mr. Justice Roberts and concurred in by Chief Justice Hughes and Justices McReynolds and Reed. The payment of the dividends occurs outside Wisconsin and is wholly beyond the reach of Wisconsin law. To call the dividend tax a tax on income is a complete misnomer. If the dividend is income at all, it is income in the hands of the stockholder, not the corporation. If this is a tax on income, then "by this process any exaction can be tortured into something else and then be justified under an assumed name." The tax falls on "what lies outside the sovereignty of Wisconsin," and is a violation of the due process clause.

Continental Assurance Co. v. Tennessee[56] upheld under the due process clause the collection from the company of a tax on the privilege of doing business in the state. The tax was measured by the premiums on policies of insurance issued by the company while it was doing business in Tennessee. The state was allowed, however, to keep on collecting the tax measured by such premiums, even after the company had withdrawn from the state. The tax on the privilege of doing business in the state could properly be measured by the premiums collected during the entire life of the policies.

2. EQUAL PROTECTION OF THE LAWS

Discrimination against Negroes. Applying the doctrine of Norris v. Alabama,[57] the Court, in Smith v. Texas,[58] reversed the conviction of Smith for rape on the ground that he had been indicted by a grand jury from which Negroes had been excluded because of their race. It found the evidence of racial discrimination persuasive. In a county having a Negro population of over twenty per cent, only five out of 384 grand jurors serving over a period of eight years were Negroes. The jury commissioner explained that Negroes had not been summoned for grand jury service because "he was not personally acquainted with any member of the Negro race." This led Mr. Justice Black, speaking for the Court, to remark: "Where jury commissioners limit those from whom grand juries are selected to their own personal acquaintance, discrimination can arise from commissioners who know no Negroes as well as from commissioners who know but eliminate them. If there has been discrimination, whether accomplished ingeniously or ingenuously, the conviction cannot stand."

II. FEDERAL AND STATE RELATIONS

1. STATE REGULATION OF ALIENS VOID

In 1939, Pennsylvania passed an elaborate Alien Registration Act. It required the annual registration of aliens over eighteen, the payment by them of a small annual fee, the securing and carrying of a card of identity, and the showing of this card on the demand of police and certain other officers. A federal district court held the act unconstitutional as a denial of the equal protection of the laws, and as an encroachment by the state upon the power over aliens constitutionally vested in the federal government. It enjoined the enforcement of the act, and that judgment came to the Supreme Court on appeal. In 1940, however, before the case could be heard, Congress passed the federal Alien Registration Act, which covers about the same ground. The federal statute requires the finger-printing of aliens, but does not require them to carry cards of identity. Under these circumstances, the Supreme Court, in Hines v. Davidowitz,[59] declined to pass on the question whether the Pennsylvania statute would have been valid if Congress had passed no legislation on the subject. It confined itself to holding that the exercise by Congress of its power over aliens ousts the state from the field and invalidates the state statute. Speaking for the Court, Mr. Justice Black emphasized the supremacy of national law in the broad field of foreign affairs, of which the treatment and protection of the nationals of other countries form an important and delicate part. When Congress has acted in respect thereto, "the states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations." The federal statute shows the intention of Congress to create "a single integrated and all-embracing system" of alien registration, and therefore the Pennsylvania statute must give way. Mr. Justice Stone dissented, joined by Chief Justice Hughes and Mr. Justice McReynolds. He agreed that Congress could set up an exclusive federal system of alien registration, but denied that it had done so. The Pennsylvania act does not conflict with or obstruct the federal statute and should be upheld as a valid exercise of the state's police power.

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[56] 311 U.S. 5, 1940.

[57] 294 U.S. 587, 1935. See this REVIEW, Vol. 30, p. 83.

[58] 311 U.S. 128, 1940.

2. STATE TAXATION OF FEDERAL AGENCIES

The federal government acquired title to certain lands in Alabama upon which at that time taxes due to the state remained unpaid. The state asserted tax liens as attaching to some of these lands, and claimed an interest in others as the result of tax sales held by the county court after the United States had become the owner of the land. The United States brought suit to quiet title to the lands. This is the case of United States v. Alabama.[60] Relying upon the doctrine of Van Brocklin v. Tennessee,[61] that lands owned by the United States cannot be taxed by a state, the government sought to have the tax liens and tax sales held void. The Court, speaking through Chief Justice Hughes, refused to hold the liens invalid. The government acquired the land knowing that the tax liens existed and

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[59] 312 U.S. 52, 1941.

[60] 313 U.S. 274, 1941.

[61] 117 U.S. 151, 1886.

"we see no reason why the United States . . . should stand, so far as the existence of the liens is concerned, in any different position from that of other purchasers of lands in Alabama who take conveyance on and after the specified tax date." At the same time, the state cannot enforce the tax liens against the land in the federal government's possession, since proceedings cannot be taken against the United States without its consent. The practical result appears to be that the state cannot enforce the liens as long as the government retains title to the lands, but may do so as soon as the government sells them. The state's claim of interest in the lands based on the tax sales held after the United States had acquired title cannot be sustained, since a suit against property in which the United States has an interest is a suit against the United States, and without its consent, not here given, the county court could have no jurisdiction.

3. STATE TAXATION AND INTERSTATE COMMERCE

In six cases, taxes levied by states were alleged to burden interstate commerce unconstitutionally. In five of these, the state tax was held valid. The most striking of the group is Nelson v. Sears, Roebuck & Co.[62] It may be recalled that in earlier cases, of which Felt & Tarrant Mfg. Co. v. Gallagher[63] was the most important, the Court held that foreign corporations engaged in interstate commerce, but selling goods within a state through local agents and places of business, may be compelled by the state to collect the state use tax from the local purchasers. This doctrine is pushed much farther in the Sears, Roebuck case. The company is a New York corporation which carries on an interstate mail-order business, and which also operates retail stores throughout the country. In order to operate such retail stores in Iowa, the company entered the state as a foreign corporation in 1928, paid the required fees, and secured the necessary permit. It still retains this status under Iowa law. It also carries on from outside the state a substantial mail-order business with Iowa purchasers, a business having no direct connection with the retail stores. Iowa imposes a tax on the use in Iowa of tangible personal property at the rate of two per cent of the purchase price. The Iowa law provides further that every retailer having a place of business in the state and selling goods for use in the state "shall at the time of making such sales, *whether within or without the state*, collect the tax imposed by this act from the purchaser." This meant that Sears, Roebuck & Co. were compelled to collect the use tax from their customers, not only on the sales made in their retail stores in Iowa, but also on the company's interstate mail-order sales to Iowa buyers. The company contended that it could not constitutionally be required to collect the tax on this mail-order business, but protested that its refusal to do so would result, under the Iowa statute, in the revocation of its permit to operate its retail stores in the state. Speaking through Mr. Justice Douglas, the Court held the statute valid. The purchaser of the mail-order goods is in Iowa, and the tax is upon the use of the goods in Iowa. Therefore the tax does not fall on something outside the state's jurisdiction. To compel the company to act for the state in collecting the tax does not impose an unconstitutional burden upon it. It enjoys valuable privileges in Iowa, and "Iowa can exact this burden as the price of enjoying the full benefits flowing from its Iowa business." There is no discrimination against interstate commerce since the sales made within the state pay the same tax as these mail-order sales. Mr. Justice Roberts, joined by Chief Justice Hughes, dissented. He felt that the statute placed a direct and serious burden upon interstate commerce, since it imposed on the company the task of collecting the tax on some 1,200,000 mail-order transactions with some 300,000 Iowa customers each year. He also urged that the act violated the Fourteenth Amendment by taxing transactions outside the state. The Court reached the same result in Nelson v. Montgomery Ward & Co.[64] on substantially the same facts.

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[62] 312 U.S. 359, 1941.

[63] 306 U.S. 62, 1939. See this REVIEW, Vol. 34, p. 280.

In Caskey Baking Co. v. Virginia,[65] the Court held that the company, operating a bakery in West Virginia but registered in Virginia as a foreign corporation, could be compelled to pay an annual license tax of $100 on each of its trucks for the privilege of peddling bread wholesale from those trucks to regular customers on regular routes. "The purely local business of peddling is what the act hits, and this is irrespective of the source of the goods sold. It is settled that such a statute imposes no burden upon interstate commerce which the Constitution interdicts."

In Department of Treasury v. Ingram-Richardson Mgf. Co.,[66] the state of Indiana was upheld in levying a gross income tax on the company's business of enameling metal in its factory in Indiana. The metal parts which were enameled were trucked into the state by the company for that purpose and were then trucked back again to out-of-state customers. The tax, however, was held not to fall on interstate commerce. A somewhat similar situation was involved, and the same result reached, in Department of Treasury v. Wood Preserving Corporation.[67] While the transactions were more complicated, the Court found that the company purchased railroad ties in Indiana and sold them in Indiana to railroad companies. It was held liable to the Indiana gross income tax.

In Best & Co. v. Maxwell,[68] a North Carolina tax was held to discriminate against interstate commerce. The company, operating a New York store, rented a sample room in a North Carolina hotel for several days, took orders from samples there displayed, and filled them by shipment direct from its New York store. For this privilege it was obliged to pay the annual tax of $250 which the state levies on "every person or corporation, not a regular retail merchant in the state, who displays samples in any hotel room rented or occupied temporarily for the purpose of securing retail orders." Retail merchants in North Carolina pay an annual tax of $1.00 for the privilege of doing business. The Court held the $250 tax void. "The commerce clause forbids discrimination, whether forthright or ingenious." No situation appeared in which the tax would be paid by anyone but an out-of-state concern. "The freedom of commerce which allows the merchants of each state a regional or national market for their goods is not to be fettered by legislation, the actual effect of which is to discriminate in favor of intrastate businesses, whatever may be the ostensible reach of the language."

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[64] 312 U.S. 373, 1941.

[65] 313 U.S. 117, 1941.

[66] 313 U.S. 252, 1941.

[67] 313 U.S. 62, 1941.

[68] 311 U.S. 454, 1940.

4. STATE POLICE POWER AND INTERSTATE COMMERCE

A California statute regulated the business of agents who sell "transportation over the public highways of the state"—or bus transportation. Such agent must secure a license, pay a fee of $1.00, and file a bond of $1,000 as a guarantee of the faithful performance of the transportation contracts which he negotiates. In California v. Thompson,[69] this act was held valid as applied to agents selling tickets for interstate bus transportation. In an opinion by Mr. Justice Stone, the Court found that Congress had passed no laws relating to the subject, and that the act did not obstruct or burden interstate commerce. "It is not shown to be other than what on its face it appears to be, a measure to safeguard the members of the public desiring to secure transportation by motor vehicle, who are peculiarly unable to protect themselves from fraud and overreaching of those engaged in a business notoriously subject to those abuses." In 1927, in Di Santo v. Pennsylvania,[70] the Court held invalid an almost identical Pennsylvania statute applicable to agents dealing in ocean steamship transportation. Justices Brandeis, Holmes, and Stone dissented. This decision is squarely overruled in the present case.

III. IMPAIRMENT OF THE OBLIGATION OF CONTRACTS

In Gelfert v. National City Bank,[71] the bank sought to foreclose a mortgage made in 1923. It secured a judgment in 1938 for $18,401.25, and at the foreclosure sale the bank bought the property for $4,000. It then asked a deficiency judgment of $16,162.12, covering the difference between the amount of the judgment and the sale price, plus taxes, fees, and expenses.

[69] 313 U.S. 109, 1941.

[70] 273 U.S. 34, 1927. See this Review, Vol. 22, p. 104.

[71] 313 U.S. 221, 1941. This case is similar in principle to Honeyman v. Jacobs, 306 U.S. 539, 1939. See this Review, Vol. 34, p. 277.

If such a judgment were awarded, the mortgagor would have lost his property and would still have owed the bank all but about $2,000 of the original debt. He alleged that the sale price of $4,000 was "wholly inequitable and unconscionable," and sought the relief provided by a New York statute of 1938 which directed the court, on proper motion, in fixing the amount of a deficiency judgment to determine the "fair and reasonable market value of the mortgaged premises" and to deduct that sum from the amount of the debt unless the foreclosure sale price should be higher. In a unanimous opinion by Mr. Justice Douglas, the Court held that the statute of 1938 did not impair the obligation of the mortgage contract. The original formula for fixing the amount of the deficiency judgment is not fixed and invariable, and it "does not become so embedded in the contract between the parties that it cannot be constitutionally altered." The legislature may properly adopt a uniform rule to diminish the chance that a mortgagee will be paid more than once. The creditor is constitutionally entitled to no more than the full amount of the debt. The obligation of his contract is not impaired by a later state statute which so changes the rules for the collection of the debt as to reduce this chance of getting more than his contract calls for.

An Arkansas statute of 1935 provided that a sale of land for the non-payment of taxes should not be set aside because of "irregularities or informalities" of procedure prior to the sale. The object was to protect the titles of those buying such lands from the state, and to encourage people to buy them. In 1933, the state acquired certain lands for non-payment of taxes and sold them to one Wood. In 1937, the legislature repealed the act of 1935, and in 1939 Wood's title was attacked on the ground of procedural irregularities prior to the tax sale. In other words, Wood's title was good under the act of 1935, but not good under the act of 1937. In an opinion by Mr. Justice Roberts in Wood v. Lovett,[72] the Court held that the repealing statute of 1937 impaired the obligation of the sale contract under which Wood acquired his title. "The terms of a statute according rights and immunities to a vendee of the state are a part of the obligation of the deed made pursuant to it." This obligation the state has impaired. Mr. Justice Black, with whom Justices Douglas and Murphy concurred, held that the act of 1937 was a proper exercise of the state's police power to aid distressed land-owners. Purchasers of tax-sale land can obtain full compensation if the sale is later set aside for irregularity.

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[72] 313 U.S. 362, 1941.

AMERICAN GOVERNMENT AND POLITICS

First Session of the Seventy-seventh Congress, January 3, 1941, to January 2, 1942. The first session of the Seventy-seventh Congress witnessed much activity in both houses, resulting, however, mainly in appropriation measures and defense legislation. Most of the bills carried through to enactment were calculated to meet the expectations of the President as set forth in his annual message of January 6, 1941.[1] In that message, the President assured Congress that the "future and the safety of our country and of our democracy are overwhelmingly involved in events far beyond our borders. . . . The immediate need," he said, "is a swift and driving increase in our armament production." Before the session came to a close, joint resolutions declaring war on Japan,[2] Germany,[3] and Italy[4] were passed. Thus it was perhaps the most epoch-making and influential legislative year, for the future affairs of our people, of any since the "founding fathers" assembled in New York City on March 4, 1789, to start legislating under the new national constitution.

The *sine die* adjournment on January 2, 1942, brought to a close the second longest session in history,[5] during which time many major pieces of crisis legislation were enacted; the total amount of money appropriated set an all-time record (roughly 58 billions, of which all but 8 billions were for defense purposes); hearings on bills and investigations exceeded in number and volume those of any prior session, running to perhaps 100,000 pages of printed matter; the testimony taken before the House and Senate appropriations committees alone printed out 18,129 pages and 4,592 pages, respectively; the debates and proceedings in the House and Senate involved 10,427 printed pages of the *Congressional Record,* while speeches and remarks printed in the Appendix under the privilege "leave to extend remarks" involved 6,105 pages.

The work of the session was rather equally distributed throughout the year, unlike that of the previous year, when nearly all the business was transacted prior to June. This past year, both chambers were active straight through until the Christmas holidays, it being the close of a session, not of a Congress.

Organization. The political complexion of the House and Senate of the Seventy-seventh Congress, first session, changed little as compared with that of the Seventy-sixth.[6] The Republicans gained five Senators and lost seven Representatives, the Democrats lost three Senators and picked up five Representatives, and third parties lost two Senators and gained two Representatives. But that is not the whole story. There were 10 changes in the Senate personnel and 74 in that of the House. The chairmanships of nine standing committees of the Senate and 10 of the House were changed at the beginning or during the session.[7]

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[1] A law approved January 2, 1942, provided that the second session of the Seventy-seventh Congress should begin on Monday, January 5, 1942, and that the first session of the Seventy-eighth Congress shall begin on Monday, January 4, 1943 (P.L. 395, Seventy-seventh Congress).

[2] S.J. Res. 116; P.L. 328.

[3] S.J. Res. 119; P.L. 331.

[4] S.J. Res. 120; P.L. 332.

[5] The session extended over 365 days as compared to 367 days for the prior one.

The changes mentioned affected the continuity of leadership in the two chambers very little. Any congressman who now enjoys the privilege of determining policy, regardless of whether or not he is a chairman, has long since been recognized and consulted. Naturally, each has a single vote, so long as he cares to exercise it; but voting in Congress and effecting what the program is going to be or what it is not going to be are entirely different things, and the latter prerogative is by far the more important; in fact, it is a negative veto. Only a few Representatives and Senators enjoy the prestige of determining the legislative program, and they are never "freshmen."

The organization around which the Democratic and Republican machines in the House and Senate were built changed little from that of the preceding Congress, and was as shown in the table on page 292.

Procedure: General Aspects. The procedure in the House and Senate varied little from that of recent years. The last two sessions were of unusual length, each being dragged out over an entire calendar year. Consequently much time was devoted to the debate of some bills. The following table gives categorically, for the last two sessions, the number of bills debated for three or more printed pages each of the *Congressional Record* by either the House or Senate. Obviously, bills not debated to this extent were not controversial, and no amendments, other than a few originating in committees, were offered to them. Nearly all other bills enacted, not accounted for in the table shown on page 293, were called up under unanimous consent and passed without objection.

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[6] See *Official List of Members of House of Representatives*, Feb. 26, 1941, Seventy-sixth Congress, p. 15. The party divisions as of that date were as follows: In Senate: 66 Democrats, 28 Republicans, and 2 others; In House: 265 Democrats, 161 Republicans, and 6 others.

[7] The nine changes in standing committee chairmanships in the Senate were: McCarran to chairmanship of District of Columbia Committee; Hill, Expenditures in the Executive Departments; George, Finance; Connally, Foreign Relations; Van Nuys, Judiciary; Reynolds, Military Affairs; Schwartz, Pensions; Hatch, Privileges and Elections; and Byrd, Rules.

The ten changes in standing committee chairmanships in the House were: Cannon to chairmanship of Appropriations Committee; Moser, Census; McGehee, Claims; Gossett, Elections No. 2; Peterson, Elections No. 3; Kirwan, Enrolled Bills; O'Leary, Expenditures in the Executive Departments; Secrest, Library; Robinson, Public Lands; and Gavagan, War Claims.

Office	*Democratic*		*Republican*	
	Senate	*House*	*Senate*	*House*
Vice-President Speaker	Wallace (Iowa)	Rayburn (Tex.)		
President Pro Tempore		Glass (Va.)*		
Floor Leaders	Barkley (Ky.)	McCormack (Mass.)	McNary (Ore.)	Martin (Mass.)
Whips	Hill (Ala.)	Boland (Penn.)	Austin (Vt.)	Engelbright (Calif.)
Assistant Whips		Ford (Calif.)		
Chairmen of Rules Committees	Byrd (Va.)	Sabath (Ill.)		
Chairmen of Caucuses	Barkley (Ky.)	Duncan (Mo.)	McNary (Ore.)	
Steering Committee Chairmen	Barkley (Ky.)	Cannon (Mo.)	No committee	Martin (Mass.)
Chairmen of Committees on Committees	(Steering Committee serves in this capacity)	Doughton (N.C.)	Nye (N.D.)	Martin (Mass.)

* Senator Harrison was President *pro tempore* until his death.

The total number of bills handled by the two houses in the two sessions was approximately the same,[8] with both chambers in session, respectively, nearly the same number of calendar days;[9] but the sittings this past year were not as long as those of the year before. The procedure was more "streamlined," particularly in the Senate, in spite of the fact that war was not declared on Japan until December 8, 1941. The proceedings printed out 21,846 pages of the *Record* in the third session of the Seventy-sixth Congress as compared to 16,532 this past year.[10]

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[8] The House passed 1,127 bills in 1940 and 1,043 in 1941. The Senate passed 1,100 bills in 1940 and 886 in 1941.

[9] The House was in session 201 calendar days in 1940 and 210 in 1941. The Senate was in session 192 days in 1940 and 167 in 1941.

[10] The *Record* was streamlined with a three-column page instead of two. The Appendix this year consumed 6,105 pages.

	76th Congress Third Session		77th Congress First Session	
Pages Debated	*House*	*Senate*	*House*	*Senate*
3– 5	7	7	7	10
5– 10	25	13	20	14
10– 15	14	16	24	9
15– 20	12	3	9	7
20– 25	4	3	15	7
25– 30	14	4	9	5
30– 35	8	3	8	2
35– 40	4	4	3	2
40– 45	2	2	1	2
45– 50	2	1	3	1
50– 60	5	6	2	0
60– 70	4	1	1	2
70– 80	2	5	5	1
80– 90	1	1	0	0
90–100	3	0	1	0
100–125	2	3	3	1
125–150	0	2	1	1
150–175	0	2	2	0
175–200	2	1	1	1
200–300	3	0	1	0
300–400	1	2	0	1
400–500	0	0	0	0
500–600	0	0	0	1
600–700	0	1	0	0
Totals*	115	80	124	67

* These data are subject to slight error, but not as much as 5 per cent.

As shown in the above table, the House debated 124 bills for three or more pages in 1941, as compared to 115 during the previous year. The Senate debated only 67 bills for three or more pages in 1941, as compared to 80 during the preceding year. The House debated eight bills in both sessions for over 100 pages each, while the Senate debated only five bills that much in the current session and eleven in the previous one. The Lease-Lend Bill[11] was the measure discussed at greatest length by either body. The proceedings on that bill in the House, consuming seven days, filled 282 pages of the *Record*, and in the Senate, consuming eighteen days, filled 568 pages.

Senate Procedure. The procedure in the Senate was too often disappointing and not in keeping with the body's reputation for being independent and self-assertive. At times, practices were inexcusable, with the leadership shirking its responsibility. Perhaps at no time, too, in recent years has the attendance been so lax. On different occasions, business continued to be transacted even after a vote showed the absence of a quorum. That situation obtained on August 14 and 15 during the consideration and disposition of major legislation, including a bill involving over six and one-half billion dollars.[12] On those two days, the roll was called several times when a quorum could not be obtained, even after the transaction of business had been held up for one or two hours.

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[11] H.R. 1776,

On March 20, when the Senate was considering the Naval Appropriation Bill, a vote was taken on the so-called Argentine Beef Amendment, showing yeas 32 (32 Dem.), nays 32 (9 Dem., 21 Rep., and 2 others). Vice-President Wallace was entertaining at a luncheon, and hence was not present to break the tie. Without objection, the Senate on March 24 approved a motion by Senator Barkley, the majority floor leader, to correct the roll-call to make the vote 33 to 32 in favor of the amendment—which was then ordered engrossed as a part of the Naval Bill.

House Procedure. The House surpassed all records in its use of special rules. On 58 occasions, it in effect suspended its rules by adopting a simple resolution in each instance setting up a special order of business (the immediate consideration of some particular bill).[13] The next highest number of special rules to be adopted in any one session was 48 in the third session of the Seventy-sixth Congress.[14]

The Rules Committee reported 67 simple resolutions (special rules) providing a particular procedure for the same number of legislative matters. Of that number, 58 were adopted, six were laid on the table because the bills for whose consideration they provided were called up under unanimous consent, and three were left pending at the end of the session. One resolution reported as early as March 30 and another on November 13 were not called up for consideration, in spite of the fact that both were highly privileged and took precedence over practically all other business. This illustrates that regardless of the prerogatives of the Rules Committee over House procedure, or of the privileged status of special rules, the final determination of the program is lodged elsewhere, i.e., in the Speaker, the floor leader, and one or two other "leaders."

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[12] On August 14, during the consideration of H.R. 5412, First Supplemental National Defense Appropriation Bill, it at one time took nearly two hours to get a quorum. *Cong. Rec.*, 77th Cong., 1st Sess., p. 7299. On August 15, during consideration of S. 1840, Construction of Defense Highways, the Senate could not keep a quorum for the transaction of business, though it did not adjourn. Finally, it not only passed the Road Bill but called up and agreed to the conference report on H.R. 5412. During the day the Senate had six roll-calls, of which two were votes. A quorum was present for only two of the calls, but neither was a call for voting. *Ibid.*, pp. 7329–7332.

[13] Four rules merely waived points of order against four different bills.

[14] See this REVIEW, Vol. 33, p. 1038; Vol. 35, p. 289.

An analysis of these rules shows that of the 58 all but three provided for the immediate consideration of certain bills; 40 were open rules merely giving otherwise unprivileged bills the right of way for a hearing in the House. Fifteen were closed rules, of which four were granted solely to waive points of order against their respective appropriation bills. All but seven specified a maximum time for general debate of the particular bill (varying from one hour to three days),[15] which was to be equally divided between those favoring and those opposing the bill; 50 rules provided that the respective bills be read under the five-minute rule for amendments, immediately following the general debate, "and that thereupon the committee rise and report the bill to the House, with such amendments as may have been adopted." At that point the previous question was to be considered "as having been ordered" on the bill.

An examination of the records will show that the House passed all but four of the bills considered under special rules. Three were defeated[12] and one was laid on the table.[16] Fifty-three became law and the others are still in process of final enactment, with one exception, i.e., the Federal Aid Defense Highway Bill, which the President vetoed, and which was enacted in a different form. Thus the Rules Committee is not used solely as an agent of the majority party to clear the way for legislation desired by the Administration and the party.

Calendar Wednesday was invoked on six different occasions, with 17 committees receiving the call. Seven committees responded to the call, presenting 26 bills for consideration, all of which the House passed. The Judiciary Committee called up 10, and Merchant Marine and Fisheries disposed of five. The other committees responding to the calls were Agriculture, Foreign Affairs, Military Affairs, Post Office and Post Roads, and Public Lands.

The suspension of the rules procedure was used only a few times during the session. Less than a dozen bills were thus passed, and only one or two were of any particular importance. Significant is the fact that the Lanham Defense Housing Bill was defeated under this procedure when a two-thirds vote in favor was not forthcoming. But the bill was later called up under a special rule and passed.

Unanimous consent procedure, other than business on the Unanimous Consent Calendar, was rather popular. It was a common practice for chairmen of the various committees to ask unanimous consent to take up a bill out of the regular order and proceed to its immediate consideration. Some days as high as 10 bills were passed after this fashion, and more were passed in this way than any other except from the Private Calendar and the Unanimous Consent Calendar.

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[15] Eighteen provided for 1 hour, one for 1½ hours, nineteen for 2 hours, five for 3 hours, two for 4 hours, one for 6 hours, one for 8 hours, one for 1 day and 1 hour. two for 2 days, and two for 3 days.

[16] H.R. 968, relative to cotton; H.R. 4228, wire tapping, and H.R. 3, detention camps for aliens.

The discharge rule was barely mentioned. No bill was called up under the procedure, and only 10 motions to discharge committees from further consideration of certain bills were filed, none receiving a sufficient number of signatures for entry on the Calendar of Motions to Discharge Committees.

Legislative Activity. A total of 649 public and private laws were enacted, of which 397 were public and 252 private. No public or private resolutions were enacted; under new regulations set up at the beginning of this Congress, all measures enacted (regardless of whether they were bills or resolutions) were designated either as public or private laws. Seven bills were left in conference, and many others on which one or the other of the two houses, or both, have taken action are still in process of enactment. The President vetoed 28 bills, making a total of 533 bills vetoed by him since he took office in 1933.

Appropriations. During the session, Congress surpassed all records in making appropriations—a grand total of $60,855,156,352.20 (including trust funds and permanent appropriations). Twenty-seven money bills enacted during the year provided for $55,855,842,108.20 of direct appropriations and $3,431,573,114 of contract authorizations, making a grand total of $59,287,415,212.20, not including trust funds and permanent appropriations. The direct appropriations exceeded the budget estimates by $1,559,305,080.88. The total of appropriations for the session more than doubled that of any other except the second session of the Sixty-fifth Congress (November, 1917–December, 1918). In that session, appropriations totaled $36,119,536,082. Of the direct appropriations, approximately fifty billions were for national defense and the other eight billions for non-defense purposes.

The 27 supply bills were truly committee products, yet the committees reported to their respective bodies measures carrying pretty much the amounts requested by the Bureau of the Budget. The budget estimates considered by the House totaled $52,961,539,360.17; the amount carried in the bills as reported totaled $53,351,799,656.36; and the bills passed provided for $53,349,224,171.87. The budget estimates considered by the Senate totaled $54,206,267,292.17; the amount carried in the bills as reported totaled $55,130,716,635.02; and the bills passed provided for $55,619,663,742.30. As finally enacted, these 27 bills appropriated $55,854,271,373.02,[16a] a sum greater than the bills totaled when they passed either the House or the Senate. Thus, compromises in conference were made at the expense of the taxpayer.[17]

[16a] Private and incidental funds total an additional $1,570,735.18, aggregating $55,855,842,108.20.

These bills accounted for much of the work of the session, keeping the appropriations committees extremely busy. At the hearings, testimony taken by the House committee printed out 18,129 pages and in the Senate committee, 4,592. The debates on these bills in the House printed out 1,117 pages of the *Record* and 437 pages in the Senate. Two hundred and sixty-three amendments were offered to the bills in the House, of which 25 came from the committee. Ninety-four were adopted, including all submitted by the committee. In the Senate, 1,067 amendments were offered to the House bills, of which 967 came from the committee. One thousand and sixteen of these were adopted, including 959 of those offered by the committee. Many amendments in both houses were lost in conference.

Legislation. In all, 2,519 bills and resolutions were introduced in the Senate and 7,016 in the House. Senate committees made 931 reports on legislation, and that body passed 886 bills. The committees of the House made 1,557 reports, and that body passed 1,043 bills.[18] The House and Senate took 80 and 93 roll-call votes, respectively, and when the session closed, 60 bills were pending on the House calendars and 40 on the Senate calendar.

Much important legislation was enacted during the year, with the voting in both chambers unusually nonpartisan. The two most discussed pieces of legislation of the session were the Lease-Lend Bill and the Repeal of the Neutrality Act; the votes on these two bills were as partisan as any, except for H.R. 2665, Reapportionment of Representatives, which was passed by strict partisan vote. The Lease-Lend Bill passed the House by yeas 260 (236 Dem., 24 Rep.), Nays 165 (25 Dem., 135 Rep., and 5 others), and the Senate by yeas 60 (49 Dem., 10 Rep., 1 other), nays 31 (13 Dem., 17 Rep., and 1 other).[19]

The procedure on the Repeal of the Neutrality Act (H. J. Res. 237) disclosed the Administration at the maximum of its effort to influence legislation. As originally reported to the House and passed by that body, the bill merely repealed Section 6, clearing the way for the arming of merchant vessels. The Senate amended the measure to repeal Sections 2 and 3 (relating to commerce with states engaged in armed conflict and relating to combat areas, respectively). During consideration of the bill in both chambers, pressure from the Administration to get the bill through in a particular form was very discernible. Comments and observations as to how the Administration felt about the matter were frequently made by the leaders in Congress, and letters and statements by government officials were quoted constantly. As amended by the Senate, the bill went back to the House, and instead of sending it to conference, a special rule was adopted to take up the Senate amendments immediately from the Speaker's table and act on them. To take this action without a special rule requires unanimous consent. The special rule to this effect, nevertheless, was adopted, and the amendments were called up and agreed to. The voting strength in the House in favor of the Senate amendments was doubtful at first. The leadership labored to assure victory; others worked for the amendments' defeat. One Representative opposing the amendments is alleged to have formed a block of 52 members against them. Before the vote was cast, however, he was called to the White House for a conference, and he ended by himself voting for the amendments. On the same occasion, an important Democratic boss spent part of an afternoon in the Speaker's office, calling in one Democratic Representative after another from his state for consultation. The location of many munition plants is said to have been changed on paper during this period, and judgeships were much discussed around the Capitol.

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[17] For a thorough analysis of these appropriations, see *Appropriations, Budget Estimates, etc.*, by Marcus C. Sheild, Clerk to House Committee on Appropriations, and Everard H. Smith, Clerk to Senate Committee on Appropriations, pp. 1–1097.

[18] Each house played a more important rôle in legislative activity than the above figures show. Of the 1,043 measures passed by the House, 799 were House bills, 191 Senate bills, 35 House joint resolutions, and 18 Senate joint resolutions. During the session, 7,016 bills and resolutions were introduced in the House. Of that number, 6,297 were House bills, 261 House joint resolutions, 61 House concurrent resolutions, and 397 House resolutions. House committees made 1,557 reports. Of the 886 measures passed by the Senate, 397 were Senate bills, 436 House bills, 26 Senate joint resolutions, and 27 House joint resolutions. During the session, 2,519 bills and resolutions were introduced in the Senate. Of that number 2,163 were Senate bills, 123 Senate joint resolutions, 22 Senate concurrent resolutions, and 211 Senate resolutions. Senate committees made 931 reports.

[19] *Cong. Rec.*, 77th Cong., 1st Sess., pp. 849, 2144.

The bill passed the House originally by yeas 259 (219 Dem., 39 Rep., and 1 other), nays 138 (20 Dem., 114 Rep., and 4 others), and the Senate amendments were agreed to by yeas 212 (189 Dem., 22 Rep., 1 other), nays 194 (53 Dem., 137 Rep., and 4 others). The Senate passed the bill, as amended, by yeas 50 (43 Dem., 6 Rep., and 1 other), nays 37 (15 Dem., 21 Rep., and 1 other).[20]

The revenue measures were several and extensive. The Public Debt Act[21] increased the aggregate public debt limit to $65,000,000,000, gave the Treasury greater and more flexible control over savings bonds as a medium of financing, authorized the issuance of a new obligation called Treasury savings certificates in place of the war-savings certificates, and made certificates issued in the future subject to federal taxation. The Revenue Bill of 1941[22] increased taxes generally, raising approximately 3.5 billions annually. The Excess-Profits Tax[23] Amendments Bill of 1941 has two major purposes, as set forth in the House committee report: "Provide additional revenue urgently needed to help meet the costs of the national defense program, and second, to prevent the rearmament program from furnishing an opportunity for the creation of new war millionaires or the further substantial enrichment of already wealthy persons." All of these tax measures moved through Congress slowly, but with little display of partisanship.

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[20] 77th Cong., 1st Sess., pp. 8250, 8907, 9116–9117.

[21] H.R. 2959. [22] H.R. 5417. [23] H.R. 3531.

Defense legislation, comprising most of the major legislation of the session, was hurried through, frequently without either debate or opposition, and hence with no roll-call votes. The bill keeping inducted men in the service for a period longer than a year[24] was much debated and bitterly contested in both chambers. It passed the House by yeas 203 (182 Dem., 21 Rep.), nays 202 (64 Dem., 134 Rep., and 4 others).[25] The vote in the Senate showed yeas 45 (38 Dem., 7 Rep.), nays 30 (16 Dem., 13 Rep., 1 other).[26] The Selective Service Act was amended in August to exempt from induction all males over twenty-eight,[27] and in December the act was amended again to register the man-power of America from eighteen to sixty-four.[28]

The Administration's proposal to requisition private property for national defense purposes was considerably modified by Congress before being finally enacted. The Senate report explained that the "substitute bill gives the President power to requisition, upon payment of fair and just compensation, military or naval equipment, supplies and munitions needed for national defense, and machinery, tools, and materials necessary for their servicing, operation, or production, when the government has immediate need for such property for the defense of the United States and has been unable to obtain it upon fair and reasonable terms by voluntary contract."[29]

The special committees created by the House and Senate, respectively, took endless testimony, but no major piece of legislation was enacted in pursuance of any of their findings. It was commonly agreed, however, that the defense program was improved on a number of counts as a result of publicizing its abuses or weaknesses.[30]

The Senate as a Council. The Senate received 11,485 nominations, of which 11,346 were confirmed, two rejected, seven withdrawn, and 130 unconfirmed. The number was the third highest handled by any one session. Procedure in the disposition of nominations was merely routine, in spite of the fact that several were of exceptional importance, e.g., Mr. Justice Stone to the post of Chief Justice, Robert Jackson and Senator

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[24] S.J. Res. 95. [25] *Cong. Rec.*, 77th Cong., 1st Sess., p. 7227.

[26] *Ibid.*, p. 7036. [27] S. 1524. [28] H.R. 6215.

[29] 77th Cong., 1st Sess., Sen. Rep. No. 565, p. 2.

[30] Eight resolutions each were adopted in the House and Senate creating special investigating committees.

Byrnes to associate judgeships in the Supreme Court, Frank Walker to the office of Postmaster-General, Dean G. Acheson to an assistant secretaryship of state, John G. Winant to the Court of St. James, Rex Tugwell to the governorship of Puerto Rico, and Francis Biddle to the post of Attorney-General.

Congress and the President. Congress seems to have fallen under more control by the Administration than in the past several years, perhaps more than ever before. By and large, the important measures of the session, including the appropriation bills, were sent to Congress by public letter addressed to some Representative or Senator, and introduced. The committees concerned held hearings on the measures, but most of the time in each instance was consumed by Administration officials testifying in support of the legislative or appropriation bills. Generally the testimony was presented convincingly, primarily because of the national emergency. The bills were then passed by each chamber nearly as reported. Should one chamber insist on writing in "undesired" amendments, such provisions were more than likely to be changed or wiped out by the other body, or at least modified in conference. Thus only a few paragraphs of legislation and hardly any entire public laws were finally enacted contrary to the will of the Administration. Of course, sometimes the various units of the Administration were in discord, at least not in accord, as to what a particular Administrative proposal should contain.

The control or influence of the Administration over Congress has been so great that even Representatives and Senators of the Democratic party have spoken out against it. Perhaps the most dramatic reflection to be found in the *Record* was uttered by Representative Monroney, member of the House Banking and Currency Committee, during consideration of the Price Control Bill (handled by the Banking and Currency Committee). He declared: "There is criticism attaching to the Gore Bill (a substitute for the committee bill), a blight that I am afraid may kill it, according to the popular conception on Capitol Hill, and that is that the Gore Bill originated in Congress. The Gore Bill was drafted by the gentleman from Tennessee (Mr. Gore) with the help of the congressional legislative drafting service, and no person other than members of Congress have had a hand in the direction and drafting of that bill. It is a bill designed to meet the situation and the evils of inflation."[31] Representative Randolph, chairman of the District of Columbia Committee, on the "American Forum of the Air" on Sunday, October 19, 1941, charged that he could not get hearings on his bill providing for a "Separate Air Force" because the President or the Administration would not permit the committee to hold them.

The Administration suffered no major defeats. A few compromises were forced, but, by and large, the Administration "requested the legislation and got what it asked for."

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[31] *Cong. Rec.*, 77th Cong., 1st Sess., p. 9392.

The President vetoed only 28 bills, and no bill was passed over his veto. The Senate did override his veto of the Strategic Defense Highway Bill[32] by a vote of yeas 57 (41 Dem., 14 Rep., and 2 others), nays 19 (13 Dem., 6 Rep.), but the House failed in its attempt by yeas 251 (137 Dem., 111 Rep., and 3 others), nays 128 (88 Dem., 40 Rep.). Neither body called up any other veto message for consideration, all being merely referred to the appropriate committees. This does not mean, however, that there was no other opposition. In fact, a few vetoed bills were changed and reënacted, not to the complete satisfaction of the Administration.

On the other hand, Congress has been attempting to reach out its "arm of influence" over the Administration. Three laws enacted during the session contain clauses authorizing Congress, by the use of concurrent resolutions, to terminate the operation of the respective measures.[33] The constitutionality of such provisions has not as yet been weighed by the Supreme Court, but that body well might hold that concurrent resolutions of the nature indicated must have the signature of the President to be valid, in spite of the fact that through all the years the President has not been signing such resolutions.[34]

While only a few Administration measures were modified to any great degree against the will of the Administration, one must not overlook the changes made by Congress in the Lease-Lend Act,[35] the bill increasing the lending authority of the R.F.C. by 1.5 billions,[36] the first bill amending the Selective Service Act relative to age groups,[37] and the bill requisitioning property for defense purposes.[38] The bill authorizing wire-tapping was completely rejected by the House by yeas 146 (111 Dem., 35 Rep.), nays 154 (56 Dem., 94 Rep., and 4 others).[39] Congressional initiative to amend the labor laws as applied to defense work, directly or indirectly, was killed on several occasions. Several times the House resorted to the use of riders on appropriation bills, and each attempt came to naught. But the House did pass before the end of the session a much opposed labor bill, which at the date of writing was pending in the Senate.[40]

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[32] See S. 1580.

[33] Public Laws 11, 213, and 354. In discussing such a provision of the Lease-Lend Bill, Representative Dirksen, author of the amendment, stated: "What the President proposes to do, however, in the policy he proposes to establish will not be made manifest until that appropriation becomes law. Make no mistake about it. . . . There is one way of doing it and doing it now, there is one way for Congress to tie a string to this matter, and that is to provide in this bill that by concurrent resolution of the two houses, without the necessity of the signature of the President, we can reach out in case of excesses and abuses and take back the legislative power that is today being delegated." *Cong. Rec.*, 77th Cong., 1st Sess., p. 767.

[34] See Howard White, "The Concurrent Resolution in Congress," in this REVIEW, Vol. 35, pp. 886–889 (Oct., 1941).

[35] H.R. 1776. [36] H.R. 5667. [37] S. 1524.

[38] S. 1579. [39] H.R. 4228.

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Discriminations in Federal Taxation of State and Local Government Securities. The battle over the tax-exempt security between the federal and the state and local governments has entered a new phase. Not content with merely taxing the income of new federal securities issued after March 1, 1941, the President, in his budget message to Congress of January 6, 1942, recommended legislation which would tax future state and local government securities, and the Secretary of the Treasury, in a speech in Cleveland on January 24, 1942, declared that it was high time to tax the income of outstanding issues as well. Up to this point, it had been the policy of the Administration to request only that the income tax be applied to future state and local government obligations.

The latest challenge of the Administration has not failed to evoke replies from spokesmen for the state and local governments. The Solicitor-General of New York State, Mr. Henry Epstein, has vigorously defended the practice of exemption and has contended that the application of the federal income tax to state and local securities would be economically unsound, unconstitutional, destructive of American political institutions, and detrimental to the national unity demanded by the defense efforts.[1]

Because the earlier proposals of the President and the Treasury to abolish the tax-exempt security by constitutional amendment received little encouragement in Congress, the Administration has sought to end tax exemption without an amendment. Steps were taken during 1941 to apply the federal income tax to the securities of the Port of New York Authority and the Triborough Bridge Authority. If this move should be upheld by the Supreme Court, the next step would be an attempt to tax directly the securities of the state and local governments.

A few years ago, many of the state and local government officials united in opposition to the Treasury program and organized a "Conference on State Defense." The governors of a number of states, the mayors of practically all large cities, and the attorneys-general of forty-five states condemned the proposed federal taxation of their securities. The opposition of local officials has been voiced also through the American Municipal Association, the Conference of Mayors, the Municipal Finance Officers' Association, and various municipal leagues.[2] The active and widespread resistance of state and local government officials to the Treasury proposal to end tax exemption may be traced to the conviction that this plan would entail a number of fiscal and economic discriminations against the governments which they represent. These discriminations are of such importance in understanding the issues involved in the controversy over the tax-exempt security as to merit analysis. The federal advantages to be derived from ending tax exemption have been much publicized and are well known, but the disadvantages to the state and local governments have not been so fully appreciated.

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[40] H.R. 4139.

[1] The pros and cons of the tax-exempt security were recently debated by Mr. Epstein and Mr. Edward H. Foley, Jr., General Counsel of the Treasury, in the *National Municipal Review*, under the heading, "Shall We Tax Government Bonds?" See Vol. 30, pp. 674–688 (Dec., 1941).

Fiscal Discriminations. The original proposal of the Treasury to extend income taxation to future issues of state and local loans was offered in exchange for permission to the states to tax the income of new federal obligations. However, the local governments do not employ income taxes in any numbers and some fourteen states do not tax personal incomes, either because of constitutional restrictions upon progressive taxation or because of political resistance to such taxation. Some observers have argued that federal taxation would have the advantage of serving as an inducement to the states lacking income taxes to adopt them. State officials have replied that the states should be free to choose such forms of taxation as they may prefer, without federal coercion.

The extension of the federal income tax under the 1941 law to the lower income groups and the raising of the tax rates will obviously not give the states much incentive to lean more heavily upon income taxation. Moreover, if more states should adopt income taxes, and if the state income taxes should be levied at very steep rates, the federal securities would be increasingly taxed and the federal fiscal gains from abolishing tax exemption would be lessened by the higher interest costs ensuing.

The state income tax rates have been much lower than the federal, and they have not been high enough to obtain revenue increases as great, relative to the higher borrowing costs which would result from taxation, as the federal government would procure from the elimination of tax exemption. The maximum state income tax rates have been 15 per cent, found only in two states, as compared with a maximum federal rate of 81 per cent. With the federal tax rates as high as they now are, the states could not impose taxes of 50 or 60 per cent. Of course the federal debt is now increasing rapidly, and for a time at least, future federal issues will undoubtedly surpass new state and local issues, with the consequence that even if new federal securities alone become taxable, the income subject to state taxation will be greatly increased. State and local government debts, on the other hand, are generally tending to remain rather stationary. The net gains and losses to be derived by the states from giving up tax exemption would obviously vary with the amount of the taxable federal obligations, their own tax rates, and their higher borrowing costs as a result of federal taxation.

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[2] The sources and nature of the state and local objections to the federal taxation of their securities were clearly indicated in *Hearings on the Taxation of Governmental Securities and Salaries* before the Special Senate Committee, 76th Cong., 1st Sess. 1939, and in *Hearings on Proposed Legislation Relating to Tax Exempt Securities* before the Committee on Ways and Means, 76th Cong., 1st Sess., 1939.

Where the state and local governments have weaker borrowing positions than the federal government, fiscal discrimination against them would result from the relinquishment of the tax-exempt security. The states and localities have a potentially lower borrowing capacity than the federal government because their revenue resources are more limited; they cannot exercise the same control over the banks and the currency system; and they cannot count upon the banks for almost unlimited amounts of credit.

The possible inequalities in interest rate advances which state and local governments would experience if their loans were taxed should be noted. Would the weakest governments—those localities with meager resources in the poorer sections of the country—have to submit to interest-rate increases greater than those encountered by the stronger state and federal governments? This the Treasury has inferred might happen. To allow for interest-rate advances above an estimated average interest-rate increase of 0.375 per cent for high-grade, long-term bonds, the Treasury added substantially to this sum to cover the unusually high increases "which might be incurred by communities with relatively poor credit standing."[3] It was thought that such communities might encounter increases as much as 0.65 per cent.

More light is needed upon the possible consequences to the interest costs of the stronger and weaker governments from the federal taxation of their securities. If, as Treasury officials and other witnesses in the Congressional hearings thought might happen, the localities with the weakest credit would experience the greatest interest-rate increases, the governments which already tend to pay the highest interest rates would be most handicapped.

State and local disadvantages in borrowing tend to be reflected in the interest rates at which they may borrow. Comparisons of the effective rates of interest on federal, state, and local loans, or the ratios of interest charges to the amounts of debt, are enlightening. The effective rates of interest on the total federal interest-paying debt fell from 3.50 to 2.58 per cent in the period 1932 to 1940 inclusive, while the effective rates of interest for bonds declined from 3.80 to 2.90 per cent, for Treasury notes from 3.11 to 1.25 per cent, for certificates and bills from 2.32 to 0.03 per cent, and for special issues from 4.00 to 3.02 per cent.[4]

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[3] *Hearings* before the Committee on Ways and Means, p. 47.

The ratio of interest payments to the gross state general government debt in 1938 was 3.7 per cent. This ratio, which may be computed from census statistics, varied from state to state.[5] For cities of 100,000 or more population, the ratio of interest payments to the gross general government debt was 3.9 per cent in 1938.[6]

Further information concerning the rates of interest paid upon federal, state, and local debts has been assembled from federal documents by the Temporary National Economic Committee. While the effective federal interest ratio has recently hovered around 2.6 per cent, the combined state and local ratio in late years has been in excess of 4.1 per cent.[7]

Because they have paid higher rates of interest than has the federal government, the state and local interest payments are relatively larger. On a combined state and local gross debt of 20 billions in 1940, interest charges were approximately 800 million, or 4 per cent, while the federal government, on a gross debt of 42 billion, paid interest charges of 1,095 million, or 2.58 per cent.[8]

Interest rates have tended to decline recently, and the state and local, as well as the federal, governments have been able to obtain new loans and to refund some of their maturing loans at lower rates of interest. Future rates of interest are uncertain, but if past conditions are an index of future interest charges, there will be a tendency for state and local governments to pay higher rates of interest than those paid by the federal government, with its superior credit position. Where states and localities already suffer a disadvantage in comparatively higher rates of interest, a tax upon their credit will be relatively more burdensome than a tax upon the federal credit, unless this discrimination should be offset by other factors.

Various statistical guesses of the long-term gains and losses to the federal, state, and local governments from the taxation of the income of their future securities have been offered. These have not fully agreed upon the eventual results of taxation, but all have appeared to substantiate the conclusion that the federal tax gains would be larger than the higher federal interest costs resulting from taxation, while the aggregate increases in interest costs for the states and localities, as a group, would apparently exceed the possible revenue gains. On the basis of the then current debt statistics, the Treasury estimated in 1939 that the federal tax gains from giving up the exemption of future debt issues would range from $179,000,000 to $337,000,000, as against increased interest costs of $19,000,000 to $50,000,000. State and local interest costs, it was estimated, would rise from $40,000,000 to $105,000,000, depending upon an increase in interest rates from 0.25 to 0.65 per cent. The margin between the minimum and maximum estimates reflected the uncertainty of the Treasury concerning the outcome. Spokesmen for the state and local governments have estimated that their interest payments would advance more than $100,000,000 if their future securities were exposed to federal income taxation.[9] These are all long-range estimates which require correction for changing debt conditions, but which may be cited for illustrative purposes. In his speech at Cleveland on January 24, 1942, the Secretary of the Treasury declared that the inability of the federal government to tax outstanding state and local obligations was now costing the government a loss of $200,000,000 annually in revenue.

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[4] Secretary of the Treasury, *Annual Report*, 1940, p. 68.

[5] Bureau of the Census, *Financial Statistics of States*, 1938, Tables 14 and 17.

[6] Bureau of the Census, *Financial Statistics of Cities*, 1938, Tables 14 and 22.

[7] The data were assembled for the period 1921–39. See Temporary National Economic Committee, Monograph No. 20, 1940 (*Taxation, Recovery, and Defense*), p. 219.

[8] From Bureau of the Census, *State and Local Government Debt: 1940*, pp. 15 and 31, and Treasury Department, *Bulletin*, Aug., 1941, p. 18.

The problem of estimating the fiscal consequences which would follow the federal and state taxation of the income from governmental securities is a highly difficult one because of the many variables involved. The amounts of future loan issues, future interest rates, conditions in the financial markets, tax rates, and other relevant factors cannot be foretold in advance. Interest rates are not determined solely by the presence or absence of tax exemption, a privilege which will be more attractive under certain circumstances than others.

The Treasury has thus far not hazarded a guess concerning the revenues which might be procured by the states from their taxes upon public obligations, because of "the lack of adequate data."[10] Professor Lutz has estimated, with respect to conditions in 1939, that the states would not obtain over $17,000,000.[11] A few years ago, Professor Hillhouse concluded that if sixteen selected states were to impose personal income taxes at an average of existing rates, only five of them would gain more in added income tax revenues than they would lose if interest rates advanced merely 0.25 per cent. If interest rates should advance as much as 0.5 per cent, only one state would enjoy a net gain.[12]

A number of observers have contended that the interest rates on state and local government bonds would rise at least 0.5 per cent if they should become taxable, and some have argued that they would rise from 0.75 to

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[9] The various estimates were cited in *Taxation of Governmental Securities and Salaries*, a report of the Special Committee of the U. S. Senate, 76th Cong., 3rd Sess., 1940, pp. 4–5.

[10] *Ibid.*, p. 4.

[11] *Ibid.*, p. 5.

[12] A. M. Hillhouse, "Intergovernmental Tax Exemption," *Municipal Year Book*, 1939, pp. 345–381.

1.0 per cent. The Treasury, it may be noted, has reported that the yield of its long-term Treasury bonds averaged about 0.4 per cent higher at the end of 1941 for the taxable as compared with the partially taxable bonds, the differential arising, it declares, from the longer maturity and the taxability of the former.[13]

Thus far the Treasury has not denied that on balance the state and local governments would suffer a net fiscal loss if governmental securities were taxed. Rather, it has suggested that the federal government would enjoy a net gain and that its gains would offset the net fiscal losses of the states and localities. It has thus implied that fiscal discrimination would result, so far as the over-all picture of state and local financing is concerned, but the states and localities have been urged to take their losses so that the federal government could take its gains.

The ire of many state and local government officials and of many investors has doubtless been aroused by the latest Treasury proposal to tax the income of outstanding state and local securities while continuing the exemption of those outstanding federal securities which were issued with the written promise of exemption. At the end of February, 1941, when new federal issues became taxable, there were approximately $52,700,000,000 of wholly or partially exempt federal securities.[14] While the Treasury has not promised that it would not ask for the taxation of outstanding state and local obligations, it has repeatedly stated, until Mr. Morgenthau's recent reversal, that the issue of tax exemption involved only future debt issues. The taxation of past debt issues would not increase borrowing costs of state and local governments for these securities, since the advantages of selling them at reduced interest rates have already been realized; but because of the general conviction that federal taxation was unlikely, the Treasury proposal will be looked upon in many quarters as violating a moral obligation which arose out of the prevailing interpretation of the constitution.[15]

The Sixteenth Amendment. The interpretation which the Treasury has offered of the Sixteenth Amendment to the Constitution conceals another potential discrimination against the state and local governments. It is argued that the amendment authorizes the federal taxation of income "from whatever source derived," and thus sanctions the federal taxation of the interest on state and local loans. The amendment does not declare, however, that the states and localities may likewise tax income "from whatever source derived." The staff of the Joint Committee on Internal Revenue has made this point clear.[16] If the states are to have the power to tax the income from federal loans under their personal income taxes, it must, therefore, be found elsewhere in the Constitution. A gross discrimination would arise if the federal income tax could be applied to state and local securities while the state income taxes could not be levied upon federal securities.

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[13] *Bulletin* of the Treasury Department, Dec., 1941, p. 25, and Nov., 1941, p. 25.

[14] Secretary of the Treasury, *Annual Report*, 1941, pp. 46–48.

[15] The editors of the *New York Times* have been moved to denounce Secretary Morgenthau's proposal as "a highly controversial plan of doubtful constitutionality, cloudy ethics, and, by his own admission, likely to yield only a drop in the bucket of war-time needs." *New York Times*, Feb. 4, 1942, p. 18.

Property Taxation. If the taxation of governmental securities is to be truly reciprocal, the taxation should not be confined to one level of government and should not cause serious discrimination against certain governments for the benefit of another one. While the Treasury has been eager to apply its income tax to state and local obligations, it has not suggested a willingness to submit to state and local property taxes upon its loans. Yet, no other tax is available to local governments, in general, by which they might obtain income directly from federal securities.

Several states attempt to tax intangible property at the same rates as real estate, and many of the states endeavor to tax it at a rate of a few mills. Commonly the states have exempted their securities and those of their subdivisions because of the assumed advantages in lowered borrowing costs and the inability to tax federal securities. Data are not available to show the state and local revenues from intangibles taxes, which are presumably much less than real estate tax collections because of the lower rates and the common evasion. Many local governments, however, attempt to tax intangibles. The cities of 100,000 or more population secured some $20,000,000 from intangibles in 1937.[17]

Under favorable conditions, the localities, as well as the states, could obtain material revenues from the taxation of public securities as property. At a rate of four mills, each billion dollars of securities that could be taxed effectively would return $4,000,000. If new taxable federal debt issues should reach 50 billions, and they could be reached by a four-mill tax, they would provide the states and localities with 200 millions in new revenue. Of course the federal government does not collect intangible property taxes, but neither do the localities and a number of the states impose personal income taxes. An equitable fiscal arrangement, if the federal government wishes to place its income tax upon state and local loans, would permit the state and local governments to place their intangible property taxes upon federal obligations.

Progression and Regression. The Treasury has sought to eliminate the tax-exempt security because of the revenues it loses from its inability to tax state and local loans and the inequities in the distribution of income-tax burdens which result from exemption. The states and localities have argued that federal revenue gains would be at their expense, and that the closer conformity with the principle of progression obtained with the extension of the federal income tax to their securities would probably be accompanied by the expansion of relatively regressive commodity and property taxes. The eighteen states which separated their personal income tax from their corporation tax receipts in 1940 reported collections from the former of 188 millions. Smaller amounts were procured in other states. Taxes upon commodities, among the forty-eight states, provided 1,647 millions, however, and property taxes supplied 265 millions. From motor vehicle licenses came 388 millions. Total state taxes, including those for unemployment compensation, yielded 4,171 millions. Personal income taxes thus returned only a small fraction of the total.[18]

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[16] *The Taxing Power of the Federal and State Governments,* a report to the Joint Committee on Internal Revenue Taxation, 1936, p. 62.

[17] Bureau of the Census, *Financial Statistics of Cities,* 1937, pp. 52–54.

In view of the fact that the federal government has practically preëmpted the personal income tax field, the further development of state personal income taxes is likely to be increasingly limited by their narrowing revenue possibilities. The state tax systems are predominantly regressive in their burdens, pressing down harder upon the lower incomes than upon the higher. Because of the traditional dependence of many of the states upon relatively regressive taxes for their major revenues, it seems probable that increases in borrowing costs which would accompany the federal taxation of their securities would be met from such imposts rather than from the personal income taxes of lesser importance. Highway bonds, which have recently accounted for over one-half of the gross state debt, may be financed with gasoline taxes with regressive effects. The costs of other loans may be financed with revenues from state enterprises which are collected at flat rates and with regressive burdens. If loans should be financed out of general state revenues, only a small part of the costs would ordinarily come from personal income taxes.

Local taxation is even more regressive in its burdens than state taxation because of the absence of progressive income and death taxes and the customary reliance upon property taxes for the great preponderance of revenues. According to Treasury estimates, 91.8 per cent of the local tax collections in 1938 were obtained from property taxes.[19] The inequalities in the assessments of property for taxation are notorious.

It is inconsistent with the principles of progressive income taxation to purchase an extension of progression in the federal tax system at a cost of greater regression in commodity and property taxes and other revenues in state and local revenue systems. By taxing the income of state and local obligations and raising the interest rates upon them, it is likely that the federal government would induce the states and the localities to resort to revenues with regressive effects to meet the higher interest charges, since it would perhaps be only in exceptional instances that the larger state income tax collections resulting from taxing federal securities would offset the greater state and local borrowing costs. The rates of commodity and property taxes and the rates charged for water, gas, electricity, and transportation are not adjusted to the income status of the persons paying them, but are collected uniformly from the rich and the poor who are liable for them.

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[18] Bureau of the Census, *State Tax Collection*, 1940, p. 13.

[19] *Treasury Bulletin*, Aug., 1939, p. 4.

The relatively regressive components of the state and local revenue systems are the sources of most of their revenues as a rule, and they will probably continue to be of predominant importance because of the growing difficulties in the expansion of the progressive income and death taxes against federal competition. Unless the federal government is willing to share with the states and the localities the greater revenues it might obtain from the taxation of their securities as compensation for their higher interest costs, the increases in interest costs might frequently be met from revenues which would pinch the poorer elements of the population harder than the richer.

The regressive character of state and local tax burdens was strikingly illustrated by Mr. Leon Henderson in the hearings before the Ways and Means Committee on the 1941 Revenue Act when he compared federal, state, and local tax burdens and estimated the results which would accompany the enactment of the Treasury tax proposals, which were substantially incorporated in the new revenue law. The ratio of state and local taxes to personal incomes under $500 was 14.0 per cent, as compared with a ratio of existing federal taxes of 8.5 per cent and a new federal ratio which would obtain after the enactment of the Treasury proposals of 11.4 per cent. For incomes of $20,000 or over, however, the ratio of state and local taxes was only 10.6 per cent, as compared with a ratio of existing federal taxes of 32.6 per cent and a ratio of federal taxes after adopting the Treasury plan of 51.6 per cent.[20] It would be wise social policy to consider the regressive character of state and local taxation and of non-tax revenues in an analysis of the effects of federal taxation of the income of the securities of states and local units and the tendency for their borrowing costs to rise as a result of such taxation.

The state and local governments have further indicated that the public services for which they are borrowing are for the benefit of the masses primarily, since their debts have arisen mainly from the financing of public schools, streets and highways, sewers and sewage disposal, hospitals, charities, and recreation. These services tend to equalize the advantages of organized society among those of lesser and greater incomes. The wealthy may send their children to private schools, employ private physicians, and enjoy their leisure on their private estates, while the poor must place their children in the public schools, must use the public clinics, and must resort to the public parks for their recreation. The state and local governments have therefore objected to the taxation of their securities by the federal government in its campaign against the wealthy tax dodgers because they have felt that the poor would be penalized while the rich tax avoiders were being brought to justice.

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[20] From *Revenue Revision of 1941*, Hearings before the Committee on Ways and Means, 77th Cong., 1st Sess., Vol. I, p. 657. (These estimates do not allow for revenues from taxing governmental securities, since the Treasury did not include them.)

Conclusions. In this paper, a number of discriminations which could arise from the application of the federal tax upon personal incomes to new state and local securities have been indicated. The states and localities are aware that the primary purpose of federal taxation is to swell the tax collections, but they contend that the additional revenues from this source would be relatively small, that they would be realized only gradually over a long period of years (unless outstanding securities were taxed), and that they would be purchased largely at the expense of increased state and local borrowing costs which would not be offset, on the whole, by the greater state income tax receipts from taxing governmental securities.

The tax-exempt security has been of as much interest historically to the state and local governments as it has been to the federal government, and it cannot be abolished without affecting their finances. For more than a century, it has been evident that the federal government and the states and localities have had conflicting interests in tax exemption. When the state and local governments, because of revenue advantages, have sought to tax federal securities, the federal government has objected that its borrowing power would be penalized; and when the federal government has endeavored to obtain additional revenues from state and local obligations, these governments have registered their opposition because of the unwanted increases in borrowing costs which would ensue and the fiscal losses which they would suffer.[21]

The present phase of the long-standing controversy over the tax-exempt security, with the state and local governments marshalling their forces against the proposed federal encroachment, can be understood only as one realizes that federal taxation would be disadvantageous to these governments unless they could share in the federal gains to an extent necessary to compensate them for their fiscal losses. Such a sharing has been unattractive to the federal government up to this point because it would lessen the federal tax advantages.

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[21] The purposes of state and local borrowing are revealed in the publications of the Bureau of the Census, *Financial Statistics of States* and *Financial Statistics of Cities.*

In its argument that intergovernmental immunity from non-discriminatory taxation has no real constitutional foundation, the Treasury appears to have overlooked the possibilities of exposing the federal securities to state and local property taxes. If immunity from income taxation for governmental securities is not required by the Constitution, it would seem that immunity from property taxation is also not demanded. By applying their property taxes to federal securities, the state and local governments could obtain substantial revenues, but the withdrawal of immunity from property taxation would tend to raise interest rates upon the federal, as well as the state and local loans, and would thereby increase interest charges. Is the Treasury willing to have the federal securities exposed to property taxation? In advancing its arguments against the tax-exempt security, it should envision the logical conclusions which those arguments suggest and should show a willingness to accept the bitter along with the sweet, the losses along with the gains.[22]

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[22] In one of the most recent statements by a high Treasury official, it was reiterated that the doctrine of intergovernmental immunity from income taxes of a non-discriminatory nature upon public securities is without a constitutional foundation. No hint was given, however, that, if this argument is valid, immunity from non-discriminatory property taxes would likewise appear to be without a constitutional basis. See the article by Edward H. Foley, Jr., General Counsel of the Treasury, "Shall We Tax Government Bonds?," *National Municipal Review*, Vol. 30, pp. 674 and 681–688 (Dec., 1941).

PUBLIC ADMINISTRATION

The Study of Public Administration. Emphasis on the study of public administration has in recent years become so marked that of all the fields in the study of government it stands out as the most rapidly growing. What Woodrow Wilson called attention to some fifty years ago[1] has in fact become the center of interest in political science. No longer is hard study confined to the problem of making constitutions. The study of administration has concerned itself extensively with the processes and procedures, with the ways of carrying out public policy. However, Woodrow Wilson's advice, recommending the careful determination of the basic political conceptions necessary for the student of public administration, has not always been followed; and the present note is designed to suggest some factors bearing on these basic political conceptions. Specifically, it is to be emphasized that the means through which the state carries on its functions cannot be adequately analyzed except in relation to its ends.

Two illustrations may help to make clear the nature of the problem which the student of administration faces. First, the tendency to minimize or overlook the differences between the problems of public and business administration is not without its difficulties. For certain purposes, this tendency is good, for it is not here implied that similar techniques cannot be useful in government as well as in business. However, to the extent that techniques condition the character of purposes to be attained, it is plain that use of the practices of business as a yardstick for measuring the methods of government is in need of reappraisal. For the ends of private business are not those of the democratic state. And means must be analyzed in the light of ends.

The second illustration is related to the first. A sharp line has often been drawn between politics and administration. Even where a relationship between the two has been formally admitted, there is still only a hesitant willingness to discuss the objectives or purposes of the state in studying administrative activity. The ends of public action are usually looked upon as outside the field of the administrator. Since he is concerned almost solely with means, to suggest that the purposes for which administration exists have relevance for the study of his work is frequently thought to violate this conception of his function. In fact, consideration of ends is thought to be made impossible by the suggestion that administration is a science.[2]

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[1] "The Study of Administration," *Political Science Quarterly*, Vol. 2, p. 197 (June, 1887), reprinted in *ibid.*, Vol. 56, p. 481 (Dec., 1941). See also the valuable reappraisal of this suggestive pioneer essay by Marshall E. Dimock, "The Study of Administration," in this REVIEW, Vol. 31, p. 28 (Feb., 1937).

[2] See, for example, Edwin O. Stene, "An Approach to a Science of Administration," in this REVIEW, Vol. 34, p. 1124 (Dec. 1940).

I

When Robert Lynd asks *Knowledge for What?*,[3] he raises a question that can effectively stir up both the preoccupied professor and the active administrator. The clues that he and others suggest for an answer have nowhere greater significance than in an examination of what public administration means. For it is in dealing with the context of modern living that the problems of administration, beyond mere structure and mechanics, begin to appear; and it is in the postulates which he suggests as the basis for study that the most crucial questions concerning state action are found.

It is not necessary to emphasize through detailed discussion how the interaction of physical and social factors has drastically changed the situations with which the individual must deal today. Because of the development of an interdependent society, the need for collective or coöperative action at many points becomes apparent. In fact, there is no alternative to formal and informal coöperation for the satisfaction of needs. As a consequence, areas of group action have become so inclusive that there remain few areas in which the individual can claim sovereignty. Thus, the search for meaningful experience becomes increasingly tied in with the development of organized activity. The individual's opportunities for participation in shaping the forces which control his life depend upon organized activity. Organization alone can provide the basis for the kind of experience which Lynd and others describe as creative. It is in these factors that the characteristics of the study of administration are to be found. For the administration of the affairs of the state is concerned with the preëminent form of group action.

To say that organized effort is important in the development of the individual is not to overlook the fact that large numbers of people have little or no opportunity for genuine participation in such organized activity. Because they find themselves confronted with a world of impersonal forces shaping their lives despite their best efforts, they turn especially to government in their search for a sense of security, a sense of belonging. To escape a disorganized economic and social world which provides little room for the realization of the basic desires of many human beings,[4] men place increasing reliance on governmental action. And herein exists the difficulty about which the student of administration must be clear.

The extensive creation of governmental services to meet needs that are apparent in any city, and more recently in rural areas, illustrates the problem in administration. The business of doing things *for* people has implicit in it an attack on the kind of self-reliance which is invaluable in any society that esteems human beings highly. Yet it is obvious that police protection, water supply, health service, housing, and many activities come within the range of public concern because no alternatives present themselves. The dilemma here is real and must be faced by students of administration.

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[3] (Princeton, 1939).

[4] The problem is well illustrated in Elton Mayo, *The Human Problems of an Industrial Civilization* (New York, 1933).

Equally significant is the extension of public controls over many phases of economic life in recent decades. Both many liberals and Marxists[5] conceived of such extensions as appropriately arming the individual to contend with corporate giants around him. They sought in government the basis for a system of counter-powers in the liberal state to offset the concentration of economic controls in the hands of a small minority. They did not so clearly see, however, that they were not dealing with a problem in physics which demanded the balancing of one side of the scale against the other. They did not clearly appreciate that power, whether exercised by so-called private authority or by so-called public authority, had much the same meaning for those who exercised it, as well as for those who were affected by it. They were rather impressed with the apparent distinction between public and private, between political and non-political, authority, Without denying the existence of possible formal differentiations between the two, it is nevertheless important in administration to recognize that public and private power are similar, and even identical, in their meanings. But it is precisely in the recognition of this similarity, or identity, that a second dilemma appears. Power in the hands of government is not substantially different in its impact from power in the hands of so-called private groups.

The task of breaking through commitments to old symbols, to borrow the language of Gaus,[6] becomes most difficult with the realization that the extension of state power or the absorption of all power by the state has not automatically solved the problems of moving toward a better community. The state, whether liberal or Marxist, has as such not served to supply the new framework of reference for a larger sense of meaningfulness in the individual. Rather, it has in most cases been either an addition to other powers or a larger and more inclusive power to which the individual willy-nilly finds himself inescapably subject. The need for the development of new institutional frameworks, for new forms of organization, conceived as devices for making the individual more meaningful, thus requires attention from the student of administration, particularly if the aims and objectives of the service state are to mean more than a shift in power from private to public hands.

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[5] See, for a recent statement, John Strachey's transitional program in *A Programme for Progress* (New York, 1940).

[6] "American Society and Public Administration," in John M. Gaus, Leonard D. White, and Marshall E. Dimock, *The Frontiers of Public Administration* (Chicago, 1936), p. 101.

More specifically, advance in understanding of the governmental process depends on an abandonment of the simple faith in forms which has too often characterized not only the reformer but even the revolutionary. To assume, for example, that the substitution of public for private ownership of a utility or banking system, or that the replacement of one governing élite by another, means an automatic step in the direction of a better society is to betray a dangerous lack of understanding of the significance of power.[7]

Stated positively, what is urged here is greater concern in the study of administration with its potential meaning for the achievement of a fuller democracy. As has been well pointed out by John D. Lewis, consent is the principal element of democracy.[8] But consent must operate increasingly beyond the areas which are now thought of as properly within the sphere of politics. It is not adequate to assume in the study of administration that the machinery of consent must be confined to the political level. In fact, to the extent that consent implies more than mechanical acquiescence in matters only of remote personal significance—to the extent that consent must rest on a genuine stake in the outcome of the process of choice—to that extent attention must be directed to those points in the workings of government where decisions are genuinely and obviously vital to the individual.

Here, then, is suggested a view to supplement that which concerns itself primarily with structure and mechanics in the study of administration. Likewise, the position here taken would go beyond that which looks upon the study of administration as concerned chiefly with the most successful exploitation of man-power, money, and materials, in the service of any master, for any purpose, subject only to the direction of politics. Rather, the study of administration must, it seems, become also, and perhaps especially at present, the study of the process of social change and of the means for making such change best serve the ends of a more truly democratic society. In the following are suggested two areas for further study of the process of administration in the light of what has been said.

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[7] Attention is being given increasingly to the need for throwing off simple faith in the idea of automatic progress to a better social order. See, for example, Lewis Corey, "Marxism Reconsidered," *The Nation*, Vol. 150, pp. 245–248, 272–275, 305–307 (February 17, 24, and March 2, 1940); and Max Eastman, *Stalin's Russia and the Crisis in Socialism* (New York, 1940).

[8] "The Elements of Democracy," in this REVIEW, Vol. 34, p. 467 (June, 1940).

II

Under the relatively primitive conditions of the police state, the processes of administration were intimately tied up with the courts. Law-enforcement involved essentially coercion of individuals by means of retribution for past actions contrary to public policy. The administrator's job under those circumstances was chiefly one of discovering who the lawbreaker was, what the lawbreaking action had been, and how a jury of the lawbreaker's peers might be convinced of his guilt. Coercion in this sense is supplemented today by new and more complex techniques.

Government seeks at present to control complicated processes through the application to them of equally complicated administrative techniques. Remote and impersonal experts are increasingly relied on to interpret public policies for the individuals whom they affect. The result has been, in many cases, one in which the individual finds himself compelled to follow complicated orders and directions without any clear understanding of their meaning or significance. Coercion in a new sense can thus emerge. For not only may the individual be cut off from knowledge of the process which affects him; he may also be vitally and helplessly dependent upon his own submission to the action of the administrator, as, for example, when such action has a direct relation to his health. Obviously, the expert in a position of power is indispensable, for only through the division of labor which his expertness manifests is it possible to deal with the complicated and technical interrelations of present-day living. Obviously, too, the threat to the affected human beings of the expert in power cannot be overlooked. The dilemma is only partially solved through political controls, since they too operate remotely, at the top. The problem of the student of administration is to direct inquiry toward implementing the concept of the citizen as participant in the process of government by means more significant than the suffrage, toward the discovery of what might be called coöperative methods of policy execution.[9]

From a slightly different point of view, coöperative methods of policy execution suggest the need for a determined search for the public interest.[10] Its discovery, among other things, depends upon the extent to which the administrator can call upon those affected by his action to assist in shaping administrative policy. Some such coöperation in search of the public interest takes the form of new mechanisms like the trade practice conferences of the Federal Trade Commission. On another level, however, coöperation in the search for public interest, supplementing other administrative techniques, suggests an area for fruitful study in a new direction. What mechanisms exist, or can be developed, to create a genuine stake in the governmental process for the ordinary individual affected by it? What is meant to be emphasized here is the thought that the relationship between administrator and citizen must be viewed not alone as a momentary contact. Rather it must be considered as a continuing process, an interaction between affected citizens and administrators, out of which the public interest can become articulate. In this view, the focus of the study of administration becomes such that both official and citizen are considered as continuously related.

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[9] The additional factor is not to be overlooked that it is sometimes quite futile to attempt simple coercion to get a job done. Thus, many action programs must come to rest on coöperation between official and citizen.

[10] For an illuminating discussion, see E. P. Herring, *Public Administration and the Public Interest* (New York and London, 1936), esp. pp. 334 ff.

New administrative techniques might be examined in a number of agencies of government to discover what the forms and methods of coöperation in the execution of policy are. Can new techniques prevent the service state from creating merely additional power patterns? Among others, the Tennessee Valley Authority provides one of the most significant case studies, from which the following illustrative materials are cited[11] to suggest possible approaches for further study.

As a part of the task of water control, the T.V.A. is organized to get at rural insecurity. Such dramatic doings as the construction of dams receive, of course, first attention as central to the problem of the control and intelligent use of resources. However, reorganizing the economy of the Valley for a better life is a second, but by no means secondary, purpose of the T.V.A.

Coöperative execution of policy is central in the work of the T.V.A. Not only would it be impractical to attempt to maintain a formal administrative establishment large enough to do all that needs doing in the effort to conserve and use more intelligently the water and soil resources of the Valley. That fact in itself, however, does not constitute the principal reason for reliance on coöperation. Since the job of the T.V.A. is one of reorganizing the living of several million individuals to conform better to their whole environment, they must in a democracy be themselves participants in redirecting their own lives. It is at this point particularly that coercion fails, that the consent and active coöperation of those directly concerned must become the foundation of administrative action.

To create a new consciousness of the soil, the T.V.A. sought through coöperative methods to arouse interest in the desirability of doing something about the land. Two programs illustrate the methods used. Individual farmers were asked to study the characteristics of the land on their farms and to grade it according to its productivity. While an expert in soils might have undertaken the classification, the T.V.A. sought rather to initiate a coöperative approach to the problem of better organizing land use. Thus a foundation was laid for ultimately bringing lay farmer and soil expert together, not as only remotely related to one another, but as participants in the solution of a joint problem. The second illustrative program operated through county groups, organized into soil conservation associations. The T.V.A. sought out community leaders to show the way to their fellow-farmers through demonstrations of the possibilities of more intelligent practices. Thus was created a community interest in a common problem and a willingness to organize for its solution. Better planning and land use, collective ownership of heavy farm machinery, and the continuous application of the best knowledge to the problems in the small area of the county—all have grown out of the association of administrator and citizen, of expert and layman, in a new form of coöperative undertaking, an undertaking in keeping with the over-all program of the T.V.A.

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[11] For a more detailed description of some of the practices referred to below, see E. S. Wengert, "T.V.A. Enlists Local Coöperation," *Public Opinion Quarterly*, Vol. 1, p. 97 (Apr., 1937).

In summary, the theory of organization in the T.V.A. emphasizes the consciously creative rather than the coercive. The complicated relationships between water, soil, crops, economics, and human beings are explored by men with skill and expertness who are, in the traditional sense, the administrators. In addition to these, however, individual inhabitants of the Valley take an increasing part in guiding the solution of these problems. In the operations of the T.V.A., "citizen" is redefined; the individual is made an official in a more important sense than Dewey's.[12] Not only is he a voter. He is an official in that, without title, without legal position, he nevertheless actively shares in making public policy concrete. All of this rests on a keen appreciation of the character of existing institutions and symbols, on their adaptation and redirection to new ends.

III

A second important area for further study in administration relates to the internal aspects of the administrative process. Particularly, the adequacy of traditional concepts, carried over from earlier times and different situations from those at present, might be reëxamined. It will be well to suggest some of the points at which further study might be appropriate.

The concept of hierarchy is related to command and obedience. The suggestion that lines of authority be drawn clearly, that each individual in an administrative structure know precisely whom he commands and whom he obeys, reflects the military origins of much thinking about hierarchy.[13] The essence of the army is force; implicit obedience is a useful tool for making that force effective. But organization viewed from the standpoint of the military is not necessarily appropriate for solution of the problems of civil government.

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[12] John Dewey, *The Public and its Problems* (New York, 1927), p. 75.

[13] Not all thinking about organization is done in these terms. See, notably, John M. Gaus, "A Theory of Organization in Public Administration," in John M. Gaus, Leonard D. White, and Marshall E. Dimock, *op. cit.*, pp. 66–91.

The difficulty implied is aggravated when students of administration see in the experience of industry all the answers to the problems of public administration. It is not always clearly recognized that industrial administration continues to approximate more nearly in methods the administration of the army, or that it represents only a point between the relatively coercive methods of the army and the relatively non-coercive methods that must be used increasingly in civil administration.

In the practice of the army, as well as of most industry, organization functions chiefly as a limitation on individuals.[14] Only a portion of their energies is then directed into an enterprise. They are not called upon to contribute to it as individuals acting voluntarily, but rather they are commanded to do their duties. The business of living remains distinct from the business of working. In contrast, the desirability of recognizing the importance of "creative management" deserves emphasis.[15] Here, then, is suggested a basis for differentiating between the traditional pattern of military or industrial organization and the organization of the affairs of the state. This concept might be explored in a number of administrative agencies, where conscious effort is made to draw from the organization's members creative contributions to its purposes, as, for example, in the T.V.A.

Creative management involves extension of the notion that administration is an educative process to the relations within the administrative organization. Not only may the process educate those citizens affected by a policy; it may be an educational experience as well for those who direct it. The official then may act in a new rôle as teacher and as learner. This notion might be labeled "engineering of consent," with the understanding that there is implied no suggestion of manipulation, but only of the creation of arrangements conducive to the maintenance of consensual relations, both within and without the administrative structure.

In this view, the hierarchy no longer serves as a description merely of relations of command and obedience. It becomes, rather, what might be called a channel for communication—a mechanism through which intelligence moves from top to bottom and bottom to top. Two problems then emerge as worthy of further examination. The first has to do with the recognition of the importance of the individual employee in the process of communication; the second is concerned with keeping the channels of communication open, so that the superior or expert may be in touch with the whole of the staff, as well as with the individuals affected by its actions. Here the internal phases of administration touch on the external.

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[14] Even where the conditions of modern warfare demand individual initiative and ingenuity, the execution of military policy rests on the self-denial implicit in strict obedience.

[15] Ordway Tead, *Creative Management* (New York, 1935), and also the same author's *New Adventures in Democracy* (New York and London, 1939), esp. Chaps. 5. 9, 13.

The most significant item in the suggested reappraisal of the meaning of hierarchy is probably to be found in the need for the creation for the employee of a genuine stake in the aims of the agency of which he is a part. Just as the citizen affected by government may be overwhelmed as easily by public authority as by private, so too the employee in a public agency may find his employment no more meaningful than in a private agency. In this area, the study of self-organization might be most suggestive, not only for its meaning in collective bargaining, but also for its bearing on the problem of realizing the greatest possible contribution of each individual to the aims of the organization. The communication of intelligence through the hierarchy may therein be substantially aided.

Relating the work of the superior or expert at the top to that of his subordinates constitutes another phase of the task of effective organization. At this point, the general staff function might be reëxamined for its possible usefulness in providing new mechanisms for communication. The general staff is most frequently conceived of as expediting the process of command. Thus is reflected its military origins. In addition, however, it might be possible to view the general staff function as a means for relating actively the top control of an organization to those directly engaged in the process of winning consent for its programs of action. Concretely, the representative in the field serves the purposes of his organization better to the extent that his ideas and reflections upon his problems can be effectively brought to bear on the policies of the whole organization. Even more: the element of remoteness, suggested above, as government undertakes increasingly difficult tasks and technical operations can be reduced in significance as the expert is made to respond to stimuli from the outside. The general staff may be useful in making such stimuli effective. For it is easy enough, as a rule, for the head to command the action of his subordinates; it is less easy by far for the subordinate to make available what he knows best and most intimately to the head. The result has been not only a loss in administrative effectiveness, but a destruction of potential strength in carrying out complicated programs democratically. This view clearly reëmphasizes administration as essentially a process of education.

From these considerations emerge a number of suggestions for study with particular reference to developing institutional patterns. The conception of the administrator-citizen provides a first clue to an understanding of the ways and means of getting around the dilemma of the liberal who is caught between private power on the one hand and public power on the other. A second clue is found in the participating employee who serves as a complement to the administrator-citizen. In fact, the distinction between the two is so difficult to draw that it must be recognized that the one can hardly come into existence without the other.

Discoverable institutional developments suggest the possibility of finding the basis for more meaningful democracy in which a self-conscious public begins to appear—self-conscious because of its stake in the process of government. Likewise the bewildering threat to democratic institutions, implicit in the need for increasing reliance on government by experts, is met as people begin to learn by doing the tasks of government in which they have a genuine stake. However, clues and suggestions are not enough. The student of administration is called upon consciously to direct attention to the possibility of perfecting, not merely better mechanisms as such, but better mechanisms adapted to democratic ends, in keeping with the best understanding of human beings and human institutions.

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INTERNATIONAL AFFAIRS

International Administrative Regulation: The Case of Rubber. The war in the Pacific has focused attention on rubber as one of the key materials of peace and war economy. It has not only caused domestic adjustments in the United States as previously in other consuming countries, both allied and enemy, but has terminated an epoch in international rubber control. At the same time, it has accentuated the permanent international concern about basic materials—their location, accessibility, production, distribution, and utilization. Thus the international rubber régime, as it operated up to the disruption of trade-lanes and the invasion and devastation of producing areas, is of interest not only because of its effects in the period just ended but also as an approach to problems of international economic policy and administrative technique which are likely to continue into post-war world organization, no matter how different its political and strategical foundations may be.

Rubber is one of the materials which have become subject to governmental planning and administration on an international scale since the first World War. Others are tin, tea, and sugar. In all these fields, regulation has been established by agreements between governments, operated by international agencies, and implemented by domestic legislation of the participating governments. As international regulation, this differs from control of some commodity by an individual government within its national confines, such as the Brazilian coffee régime, or by several administrations under the same sovereignty, such as rubber control in several British dependencies prior to the international régime. Again, as intergovernmental regulation, it differs from systems under which commodities, although dealt with internationally, are controlled on the basis of private agreements between industrial organizations, and which are merely implemented by domestic legislation, as was the case with sugar under a previous régime.

The aim of commodity control through international governmental machinery thus far has been to regulate production of the commodity which is destined for international trade, and through such regulation to limit, but not to supplant, free enterprise and competition. Without going into the conflicting views on the merits, the inevitability, or the ultimate purposes of such regulation, it may be said that it was always adopted to cope with a definite economic situation, which was essentially similar in all these cases. Such a situation arose when production of the commodity expanded at a much faster rate than the demands of consumers or manufacturers, and when a readjustment of output to demand through free competition and elimination of marginal producers appeared either unworkable or detrimental.

In each instance of intergovernmental regulation, however, the conditions which created or influenced this economic situation were peculiar to the commodity. Its uses, the location and methods of production, its rôle in the national economies of producing countries, and also the relationships between producers, distributors, manufacturers, and consumers at the time when the régime was set up have all affected the individual scheme of regulation. This is true also of rubber regulation under the Agreement of London of May 7, 1934.[1] The Agreement was concluded by the British, Indian, Dutch, French, and Siamese (now Thai) governments and operated by the International Rubber Regulation Committee, set up under its provisions. It has since been amended several times,[2] and revised and renewed in 1938 for a period ending December 31, 1943, unless renewed again.[3]

I

The over-supply problem of rubber which this régime was established to meet arose from conflicting conditions of its chief use for tires and its production mainly by plantations.[4] The conflict was one between demands which suddenly became inelastic and a producing system designed and financed for continued development. The ground for this conflict was laid with the sharp successive increases in the demand for tires in the first World War and with the advent of motor-car mass production in America. The resulting large-scale expansion of production depended on the plantation system, but left the bulk of the plantation output to be absorbed for a single manufacturing purpose.

With the saturation of the American automobile market about 1929, the requirements of tire manufacturers in this country became stationary.

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[1] Agreement to Regulate Production and Exports of Rubber, May 7, 1934, League of Nations, *Treaty Series* 171: 204–222, Great Britain, Foreign Office, *Treaty Series* No. 12 (1934), Cmd. 4583.

[2] Protocols, June 27, 1935, May 22, 1936, and Feb. 5, 1937, League of Nations, *Treaty Series* 171: 222–228, Great Britain, Foreign Office, *Treaty Series* No. 12 (1936), Cmd. 5236, and No. 11 (1937), Cmd. 5384.

[3] Revised text, published in Declaration of H. M. Secretary of State for Foreign Affairs, Oct. 6, 1938, Great Britain, Foreign Office, *Treaty Series* No. 74 (1938), Cmd. 5901.

[4] For the economic background of the present rubber régime, see F. Arcoleo, "International Organization of the Rubber Market," *International Review of Agriculture (IRA)*. 27: E 339–341, 1936; H. George, *Kautschuk* (Leipzig, 1938), 25–28, 98–102, 121–126, 146–161; A. Phillipson, *The Rubber Position and Government Control* (London, 1924); J. W. F. Rowe, *Studies in the Artificial Control of Raw Material Supplies: No. 2, Rubber* (London, 1931. Royal Economic Society, Memorandum No. 29); C. R. Whittlesey, *Governmental Control of Crude Rubber* (Princeton, 1931), Chaps. 1–2; H. and R. Wolf, *Rubber; A Story of Glory and Greed* (New York, 1936), Bk. III, Chap. 2.

Abroad, the market for motor-cars and tires could not be greatly expanded without a considerable rise in the standard of living in leading countries, which did not materialize. On the other hand, the establishment of plantations would have been impossible without leaving the planted trees to grow untapped for years, as against the tapping at random of wild growing rubber trees. It also involved great initial investments for research, sanitation, and cultivation, made in view of continuing development. Moreover, the plantation system, together with the climatic requirements of the rubber plant, worked to concentrate production in a small number of humid tropical countries; and by its very expansion, rubber planting in the foremost producing countries grew to such a proportion of their national economies as to become indispensable for their continued prosperity. This was further accentuated when the absorption of increasing production encouraged additional expansion by small rubber gardens.

Under these conditions, the alternative to a regulated output would have been a steady growth of production, with prices dropping until enough producers were forced out of competition to restore the balance. Without a drastic and continued slump, plantations would prefer years of diminished returns, and even moderate deficits, on extended plantings to the loss of investments by abandoning cultivation. Such a slump, however, would entail huge losses for all operating plantations. It would also throw out of balance the national economies of countries which largely, if by no means wholly, depended on rubber production—notably British Malaya and the Dutch East Indies. It would even threaten to hamper an eventual new expansion of the tire industry, since prices would have to rise considerably before the acreage of planting would again be expanded on a large scale.

Regulation of rubber production was thus promoted by a very real coincidence of interests: the immediate concern of all competing plantations in avoiding a price slump; the long-range interest of manufacturers in a steady supply at stable prices; and the interests of a small number of governments in their national economies and revenues. Certain interests of a more controversial nature also were bound up with regulation. Restriction of production is apt to be viewed with favor by many producers for the sake of rising prices, but it may be disliked by consumers for the same reason. Furthermore, regulation tended to protect the rubber plantations; the native small holders do not depend on such protection, because for a living they can turn their acreage to other uses in bad times, while in good times they can more cheaply expand it without restriction. Regulation also tended to protect the existing ownership of plantations against newcomers; in the case of rubber, in particular, it safeguarded British and Dutch planters against being bought out or supplanted by American interests.[5]

Since virtually all production of rubber is for export, the regulation scheme finally adopted in 1934 centers on a limitation of exports, with some additional provisions on stocks and planting areas. It covers the British dependencies of Malaya, Burma, Ceylon, India, and Sarawak; also the Netherlands East Indies, French Indo-China, and Thailand.[6] Exports from these territories are restricted by flexible contingents, which are defined by percentages of fixed annual basic quotas. The basic quotas are laid down for each year and each participating territory in the Agreement for its duration.[7] Determination, from time to time, of uniform percentages that are to constitute the permissible exportable amounts of each territory is left to the International Rubber Regulation Committee.[8] Full flexibility of exports is assured by keeping the exportable amounts unpegged to any definite standard, such as the pivotal price which governed export contingents under the previous intra-British scheme, the Stevenson plan.[9] Moreover, if exportable amounts are unfilled or exceeded by actual net exports, the differences are transferable within certain limits to the following annual amounts.[10] Exceptions from this scheme of uniform percentages are provided for Thailand, to which minimum exports are conceded, and for Indo-China, which is exempt from percentages, subject only to specified deliveries from her exports to the Committee; also since 1938 for Burma, excepting her exports to India from her permissible amounts.[11] In order to keep production down to the requirements of such regulated exports, the Agreement also determines flexible limits for the keeping of stocks in many participating territories[12] and prescribes maximum areas for new planting and replanting.[13] It also provides for the issue of certificates of origin and other implementing measures by the member administrations [14]

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[5] The conflicting viewpoints are reflected in an extensive literature. See, on the one hand, C. F. Dawn, *The Future of Rubber: Whither and How* (London, 1934), 13–15; H. Hoover, "Fundamental Aspects of the Situation," in U.S. Department of Commerce, Bureau of Foreign and Domestic Commerce, *Trade Information Bulletin* No. 385, 1–18, 1926; R. F. Martin, *International Raw Commodity Price Control* (New York, 1937), 14–15; G. H. Seybold, "Rubber Restriction Wabbles," *The Rubber Age, New York* (*RA. NY.*) 38: 269–270, 1935–36; F. J. Thompsett, "Should International Rubber Regulation Be Renewed?," *The Rubber Age, London* (*RA. L.*), 18: 183–184, 1937–38; Wolf, *op. cit.* See, on the other hand, "Rubber Restriction Plan Enters Second Month" (report on views of F. R. Henderson), *RA. NY.* 35: 177, 1934; A. B. Tatistcheff, "Rubber Restriction Holds" *RA. NY.* 38: 268, 1935–36; "Sir Herbert Wright Talks on Restriction," *RA. NY.* 39: 110, 1936.

[6] Art. 1, revised in 1938.

[7] Art. 4(a); table of quotas amended by Protocols of June 27, 1935, May 22, 1936, and Feb. 5, 1937 (*supra* note 2); revised in 1938 for the second five-year period.

[8] Art. 4(b) (c); revised, as Art. 4(c) (d), in 1938.

[9] Committee Appointed by the Secretary of State for the Colonies to Investigate and Report upon the Present Rubber Situation in British Colonies and Protectorates, *Supplementary Report*, Oct. 2, 1922, Cmd. 1756, Recommendations, esp. Nos. 2–4.

[10] Art. 5(1) (2), amended in 1938.

[11] Arts. 4(b), 6; revised as Arts. 4(b) (c) (d), 6, in 1938.

The working of the whole scheme of production regulation thus turns on decisions of the International Committee, which is charged with fixing the actual export quotas in the proportion of the basic quotas and thus determining the total volume of regulated exports and, indirectly, of production.[15] In addition to this central function, the Committee has certain other powers to regulate export and output. It may dispose of rubber delivered to it from Indo-China under her special régime; since 1938, it may also vary, within certain limits, the percentages of the planted area of each territory on which new planting is permitted.[16] Auxiliary functions of the Committee concern its internal administration.[17] Other auxiliary functions include centralizing information and publicity, maintaining contacts with member administrations, and making recommendations to signatory governments.[18] It may make such recommendations not only within the framework of the Agreement, but also on the subject of renewing and amending the Agreement itself. Indeed, renewal of the Agreement beyond 1938 depended, and beyond 1943 it again depends, upon such recommendations being made by the Committee and accepted by the signatories under a special procedure. Since 1938, recommendations for amendments may also be made at any time during the life of the Agreement, although these may affect the basic quotas and voting strength of members only in cases of accession of outsiders.[19]

The Committee to which these far-reaching powers have been granted is composed of delegates of the member administrations. Representation and voting strength of the administrations is unequal, being designed to correspond as closely as possible to the different producing capacities of their territories, yet to secure a manageable size and clear-cut procedure for the Committee. Thus, each territory has one vote for every complete 1,000 tons of its annual basic quota. But the membership of the Committee is fixed permanently, totaling fourteen at first and increased to seventeen in 1938, with delegations ranging from four members down to one; and each delegation is to cast its votes as a unit through one of its members.[20]

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[12] Not in Burma, India, parts of Malaya (Singapore, Penang), Sarawak, Indo-China (until 1938), and Thailand.

[13] Arts. 11, 12, revised in 1938.

[14] Arts. 9 and 10 (certificates of origin), 13 (no exportation of portions of rubber plants), 14 (prevention of smuggling), 16 (contributions to expenses of the International Committee), 19 (coöperation on research); Arts. 9, 13, 16, 19 were revised in 1938. See also Art. 21, added in 1938 (right of signatories to suspend their participation).

[15] Art. 4(b); revised, as Art. 4(c), in 1938.

[16] Art. 7; Art. 12(b) (c) as revised in 1938.

[17] Arts. 15(e) (g) and 18 (appointments, elections, etc.), 15(o) (budget and statement of account), 15(p) (rulings on procedure).

[18] Arts. 15(j); 17; 19(i) as revised in 1938; 3(c)–(g), revised, as Art. 3(c)–(i), in 1938.

[19] The special régime for Indo-China may not be affected at all.

Most major decisions depend upon a majority of three-fourths of the total votes of all delegations entitled to vote. This qualified majority is required not only on the all-important issue of fixing or varying the export percentages of the basic quotas; it extends also to rules of the Committee's procedure, and since 1938 to permissible new planting and replanting, the rate to be levied on exports for the support of research, and recommendations on amendments to the Agreement in the course of its duration. A simple majority of the votes cast is sufficient for other decisions, including recommendations for amendments at the renewal of the Agreement.[21]

The Committee is assisted by an Advisory Panel, representing the rubber manufacturers. The functions of this body, however, are limited to advising the Committee from time to time on matters affecting manufacturers' interests, especially world stocks, export quotas, and new planting and replanting. Membership of the Panel, originally fixed at three, is now increased to four.[22] The members are nominated by organizations invited for this purpose by the Committee.[23]

II

To understand the working of this international régime, we must consider the International Rubber Regulation Committee in action. We must also consider the relations of its actions to acts of member administrations and producers in their territories, of outsiders, and of the manufacturing interests.

The interplay of governments and business interests in the operation of the rubber régime, on both the international and national levels, was foreshadowed by the methods by which the International Committee came into being. The Agreement establishing the Committee was concluded by five governments and made binding upon the administrations of the eight territories covered by it. But its provisions actually embodied an understanding previously reached by producers. Negotiations were conducted first by British and Dutch producers with the backing of their governments, and they were finally joined in by representatives of the minor producing countries.[24] Their progress depended in the first place upon the getting together of the British and Dutch interests, lack of which brought them to a temporary standstill in 1932, just as in 1922 it had thrown back the British to the Stevenson restriction plan[25] and contributed to its ultimate failure and abrogation in 1928.[26] The agreement which was signed by all producers' representatives on April 28, 1934, was submitted by them to their governments with the request to give legislative effect to it. It was followed closely by the draft of the British government, which was adopted within ten days by all signatories.[27]

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[20] Art. 15(b), revised in 1938; 15(k) (l). The number of substitute members is also fixed on a permanent scale.

[21] Art. 15(n). Special provisions for votes of the delegation from Indo-China: Art. 15(n) (2), revised in 1938.

[22] Including originally one and now two American representatives.

[23] Art. 18, revised in 1938.

The factual collaboration of governments and producers which was thus inaugurated was to some extent reflected in the Committee's composition. Of its members, the majority were taken from civil servants, including the chairman chosen by the Committee.[28] A minority was appointed from members of agency houses, which are close to the rubber-growing interests, while investors and traders were not represented and manufacturers were confined to the Advisory Panel. The members of the Panel were nominated by manufacturers' associations of the United States, Germany, and Great Britan.[29]

Beyond matters of its own organization and internal administration and services of information,[30] the work of the Committee from the outset centered on the determination of amounts exportable from member territories. In the language of the Agreement, the Committee from time to time fixed the variable percentages of the conventional basic quotas. But since both the percentages and the periods for which they are valid were left by the Agreement to the Committee's discretion, its action in fact amounted to free determination of the total volume of exports for freely determined periods, with only the ratio of their distribution among member territories laid down in the Agreement. This goes beyond executing a policy established in a convention and possibly modifying and adapting it to changing conditions. It implies the formulation by the Committee itself of the policy to be applied to the market situation at any time. The Committee had to establish the facts of the market situation with which it had to deal, to agree on the standards it was to maintain, to fix its resulting policy in terms of quota percentages and dates, and to control the conformity of actual exports with them.

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[24] George, *op. cit.*, 162–163, contrasting these negotiations with unsuccessful preceding attempts of producers at regulation without governmental action.

[25] Committee Appointed by the Secretary of State for the Colonies (*supra*, note 9), *Report*, May 19, 1922, Cmd. 1678, Nos. 11, 16–18, and *Supplementary Report*, Oct. 2, 1922, Cmd. 1756. Nos. 1–6.

[26] Arcoleo, *op. cit.*, *IRA*. 27: E 344–350, 1936; George, *op. cit.*, 139–142; Phillipson, *op. cit.*, 33–36; Rowe, *op. cit.*, 43; Wolf, *op. cit.*, 229–232.

[27] Rubber Growers' Association (RGA.), "Communiqué," Apr. 29, 1934, *Rubber Growers' Association Bulletin* (*RGAB.*), 16: 177–178, 1934. Cp. H. de Leeuw, "Dutch Plantation Interests Elated Over Restriction Announcement," *RA. NY.*, 35: 71, 1934; Wolf, *op. cit.*, 233; "The International Rubber Regulation Committee and Its Work," *RA. L.* 18: 386, 1937–38.

[28] Sir John Campbell (also chairman of the International Tin Committee); see International Rubber Regulation Committee (IRRC.), "Communiqué," May 9, 1934, *RGAB.* 16: 239–240, 1934.

[29] IRRC., "Communiqués," May 9, June 26, and Oct. 30, 1934, *RGAB.* 16: 239–240, 315, 661, 1934. Cf. Thompsett, *op. cit.*, *RA. L.* 18: 183–184, 1937–38.

[30] IRRC., "Communiqués," June 26, 1934 (organization of work, preparation of statistics), Jan. 30, 1935 (publication of the Statistical Bulletin, London, monthly, since 1935), *RGAB.* 16: 315, 1934, 17: 3, 1935.

In fact, the Committee based its decisions on estimates of future absorption figures. It derived its estimates from statistics gathered by its own staff of statisticians, which in turn rested on official statistics of the member administrations;[31] it also considered statistics collected independently by business firms and associations and made available to the Advisory Panel.[32] However, it never fixed its policy as to how to correlate export figures with these absorption forecasts. That is to say, it formulated no standards to give definite meaning to such terms as "a normal figure" of world stocks, "an orderly manner" of adjusting supply to demand, and a price both "fair and equitable" and "reasonably remunerative to efficient producers," by which the objectives of regulation are adumbrated in the Agreement.[33] With few exceptions,[34] the Committee's practice was simply to announce what percentage and period were decided upon each time.[35] Moreover, from the first it reserved its right subsequently to alter its decisions; and several times it revised the percentages once decided upon.[36] Yet its decisions were not based only on administrative fiat. Quite apart from its prescribed consultations with the Advisory Panel, it has become known in at least one case that a quota decision involving a reversal of policy was preceded by unofficial negotiations with a deputation representing American manufacturers, who were interested in this reversal as easing the flow of supply.[37]

While the Committee's policies were kept flexible and for the most part unexpressed, they can nevertheless be gathered from its infrequent statements of governing reasons and from the decisions taken in the course of widely varying market developments. Generally, it appears that these decisions were not made with a view to equalizing exports within definite periods with the estimated absorption minus eventual surplus stocks. Maintenance of a definite price level has been an important,[38] but often not the governing, consideration in determining the export quotas. At the beginning of regulation, the Committee had to cope with the double problem of liquidating the existing surplus stocks and permitting control over output and prices to become effective. It therefore followed a policy of lowering exports very gradually but steadily for a period of over two years. Starting with one hundred per cent of the basic quotas for the first two months of regulation, it reduced the percentage by steps of ten per cent and later five per cent in two- or three-month-periods, with only one intervening raise of five per cent. Thus an export rate of sixty per cent was reached after sixteen months of restriction and then maintained for three-quarters of a year, followed by a rate of sixty-five per cent for another half year.[39]

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[31] Communicated under Art. 17(b) of the Agreement.

[32] *Loc. cit.*, *RA. L.*, 18: 387, 1937–38.

[33] Preamble, revised in 1938.

[34] IRRC., "Communiqués," May 9, 1934, Jan. 26, 1937, July 5, 1940, *RGAB.* 16: 239–240, 1934, 19: 3, 1937, 22: 163, 1940. Cf. *infra.* notes 38, 47.

[35] Letter of the secretary of the IRRC., quoted by Arcoleo, "The International Rubber Agreement, 1938," *IRA.* 30: E 391, 1939.

[36] IRRC. "Communiqués," Feb. 26, Mar. 26, Sept. 24, 1935; Oct. 27, Dec. 15, 1936; Jan. 26, Mar. 16, 1937; May 16, July 25, Sept. 9, Oct. 3, 1939; July 5 and Sept. 9, 1940; *RGAB.* 17: 63, 102, 377, 1935, 18: 432, 526, 1936, 19: 3, 85, 1937, 21: 324, 412, 505, 1939, 22: 163, 208, 1940.

[37] See "An American Storm Brewing," *RA. L.* 18: 73–74, 1937–38.

This policy resulted, after further increases of stocks and irregular prices in the beginning, in a considerable reduction of world stocks and a substantial upward movement of prices.[40] With the specter of growing surpluses and ruinous prices thus banned by 1936, the eventual tightness of restriction itself raised a new problem. It consisted in maintaining an adequate flow of supply without disturbing the stability of prices. To this situation, the Committee responded by a change of policy. It relaxed restriction by raising percentages from sixty-five per cent in the second half of 1936 to ninety per cent in the second half of 1937. It did so again by gradual steps, even though it had repeatedly to revise its decisions upwards before they became applicable. On the other hand, it maintained a policy of fixing the higher percentages well in advance of their periods of application, for the express purpose of preventing a temporary restriction of exports from stifling production for future demands, especially the anticipated tire consumption in the United States.[41]

A third stage of regulation was reached when the recession of 1937 caused a sharp decline of American demands for tires with which production had been especially encouraged to keep up by the repeated increases of export percentages.[42] Against the resulting drop in prices, the Committee resorted to a new tightening of restriction, but this time by more drastic cuts in quicker succession. It brought exportable amounts down from ninety per cent of basic quotas at the end of 1937 to forty-five per cent for the second half of 1938, by only three steps of twenty, ten, and fifteen per cent, respectively, with each quarter; and it permitted a rise to only sixty per cent by the third quarter of 1939.[43]

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[38] Cf. the provisions for maintenance of a definite price range in the agreements between the Reconstruction Finance Corporation, Rubber Reserve Company, and IRRC. (*infra*, note 47).

[39] IRRC. "Communiqués," May 9, Nov. 2, 1934; Mar. 26, Sept. 24, Dec. 3, 1935; and Apr. 28, 1936; *RGAB.* 16: 239–240, 661, 1934, 17: 102, 377, 544, 1935, 18: 149, 1936.

[40] Arcoleo, *op. cit., IRA.* 27: E 355, 1936; George, *op. cit.*, 178–180; "Another Look at Restriction," *RA. NY.* 41: 318, 1937.

[41] IRRC., "Communiqués," Dec. 15, 1936; Jan. 26 and Mar. 16, 1937; *RGAB.* 18: 526, 1936, 19: 3, 85, 1937.

The effects of defense preparations in 1939 inaugurated the fourth, and so far the last, period of regulation, marked by the release of increased exports to meet growing war requirements. By the Agreement of June 23, 1939, the British and United States governments arranged for the exchange of 600,000 bales of American raw cotton against British rubber of equivalent value, amounting to about 85,000 tons.[44] Since this exchange was to be effected by direct barter between the two governments and to provide them with the reserve stocks for use only in a war emergency, its execution depended on the release of correspondingly higher exports by the International Committee. The British-American Agreement therefore provided for a British request to be made to the Committee for additional releases and for action by both governments to exclude commercial use of the supplies thus released.[45] Following the British request, the Committee revised the percentage for the last quarter of 1939 from the originally announced sixty per cent first to seventy per cent and finally to seventy-five per cent, and for the first half of 1940 fixed it at eighty per cent.[46] Further increases of export percentages resulted from direct negotiations of a representative of the Committee with United States governmental agencies. Agreements between the Committee and the Reconstruction Finance Corporation and its subsidiary, the Rubber Reserve Company, provided for purchases of rubber, at a specified price range, for a new reserve stock first fixed at 100,000 and finally increased to 430,000, tons for United States defense or emergency purposes, and for the release of the necessary additional exports by the Committee.[47] The Committee accordingly revised exportable amounts for the last two quarters of 1940 to eighty-five and ninety per cent, and raised them to one hundred per cent for the first three quarters of 1941 and one hundred twenty per cent for the last quarter of 1941 and the first of 1942.[48]

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[42] Arcoleo, *op. cit.*, *IRA*. 30: E 390–391, 395–398, 1939.

[43] IRRC. "Communiqués," Nov. 30, 1937; Jan. 25, May 31, Sept. 12, Nov. 15, 1938; Feb. 14 and July 25, 1939; *RGAB*. 19: 535, 1937, 20: 52, 238, 393, 465, 1938, 21: 69, 412, 1939.

[44] Agreement for the Exchange of Cotton and Rubber, June 23, 1939, U. S. Department of State, *Treaty Series* No. 947, 1939, Arts. 1 and 2. Cf. "Survey Notes (Rubber and the Barter Scheme)," *RA. L.*, 20: 171, 1939.

[45] Arts. 4 and 5.

[46] IRRC., "Communiqués," July 25, Sept. 9, Oct. 3, Nov. 15, 1939; Feb. 20, 1940; *RGAB*. 21: 412, 505, 541, 1939, 22: 19, 1940.

[47] Memorandum of Agreement (First Agreement), June 29, 1940, Second Agreement, Aug. 15, 1940, and Third Agreement, Mar. 7, 1941, *RGAB*. 22: 139–140, 199–201, 1940, 23: 79–80, 1941.

To fulfill its regulatory function, the Committee also had to observe the measures of members to limit their actual exports to the exportable amounts and the degree to which they were successful. For it had to determine the deficiencies or excesses of actual exports which under the Agreement were to be carried over to subsequent exportable amounts. Also, when exports actually could not be kept to the amounts fixed within the limits of allowable transfers, it had to take note of the obstacles in framing its future regulatory policy. In fact, deviations of exports from contingents could in most cases be handled by transfers to subsequent contingents.[49] However, in the case of the Dutch East Indies, actual exports and percentages proved so wide apart after the second year, and reflected such a discrepancy between production capacity and the estimate on which the basic quotas were based, that the Committee made an exceptional decision. It decided not to deduct the Dutch excess exports from the third annual percentages.[50] It did so in view of an anticipated change in the Dutch basic quotas, even though such an eventuality was not provided for in the Agreement.

Nor was the Committee content with adjusting or disregarding deviations from export percentages within the quota framework of the Agreement. It took action on moves to change the quotas themselves, without resorting to its authority to make formal recommendations for quota changes, which was limited to the renewal of the régime or the accession of new members. When Siam refused to ratify her signature to the original Agreement unless her basic quotas were considerably increased, the Committee is understood to have made a compromise proposal for a moderate increase of her quotas.[51] Actually, Siam was able to extract full consent to her demands from the other signatories. This was embodied in the Protocol of June 27, 1935, followed by slight increases of the Indian and Burmese quotas in the Protocol of May 22, 1936.[52] But the Committee refused to entertain similar claims from Ceylon and British North Borneo, which remained unsuccessful.[53] Again, when the impossibility of keeping Dutch East Indian exports to the common percentages proved the inadequacy of that country's basic quotas in relation to those of other members, the Committee decided to recommend considerable additions to the Dutch quotas. It acted upon assurances from the colonial administration that it expected the new quotas to be applied effectively.[54] The Dutch quotas were amended accordingly by the Protocol of February 5, 1937.[55]

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[48] IRRC., "Communiqués," May 21, July 5, Sept. 9, Nov. 28, 1940; Feb. 25, May 20, and Aug. 19, 1941; *RGAB.* 22: 118, 163, 208, 284, 1940, 23: 26, 60, 90, 1941. See also the Communiqué of the IRRC. of Dec. 2, 1941, as quoted in *RA. NY.* 50: 214, 1941. That the quota of 120 per cent could be completely filled was doubted even before the Japanese invasion, *RA. NY.* 50: 38, 214, 1941.

[49] *Loc. cit., RA. L.* 18: 386–387, 1937–38; George, *op. cit.,* 175–176.

[50] IRRC., *Statistical Bulletin,* Dec., 1937, 4 note; cp. George, *op. cit.,* 174.

[51] "One Year of Restriction," *RA. NY.* 37: 182, 1935.

[52] *Supra,* note 2.

[53] "Rubber Quotas Unchanged," *RA. NY.* 40: 47, 1936–37; George, *op. cit.,* 174.

The Committee also made decisions on other phases of regulation, such as the permissible acreage for new planting or replanting.[56] Above all, it exercised its authority to make recommendations to the signatories on renewing and amending the Agreement at the end of the first five-year period. It then drew up a thoroughly revised text which, among other changes, increased the basic quotas, revised the limitations of stocks and planting, and considerably extended the powers of the Committee. After releasing the provisional revised text, it undertook negotiations with authorities of Siam on the special position of that country and embodied their results in the final revised text, which was accepted by all signatories.[57] The Committee thus virtually determined the present form of the régime in the light of its experiences.

III

The extent to which the member administrations coöperated with the regulatory policies of the Committee is indicated, above all, by the margin between exportable amounts and actual exports. This margin was remarkably small throughout, hovering around one per cent of the total annual exportable amounts before the war, with the one important exception of the Dutch East Indies prior to the readjustment of their basic quotas.[58] It must be remembered, in this connection, that the basic quotas were originally determined by direct negotiations between producers, and that later changes were worked out by the Committee in negotiations with the governments concerned. The special case of Siam, which obtained quotas in excess of those originally envisaged and of those proposed by the Committee, is explained by the unique bargaining position of that country. Its production capacity was too small to upset the régime, even under a disproportionately high quota; but its location invited smuggling transit from its highly productive neighbors if it remained an outsider. Similar considerations may have induced the Committee to conduct special negotiations with Siam at the renewal of the Agreement.

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[54] IRRC., "Communiqué," Dec. 3, 1935, *RGAB.* 17: 544, 1935.

[55] *Supra,* note 2.

[56] IRRC., "Communiqué," Feb. 20, 1940, *RGAB.* 22: 19, 1940. See also the Communiqué of Dec. 2, 1941, as quoted in *RA. NY.* 50: 214, 1941.

[57] IRRC., "Communiqués," Feb. 22, Mar. 14 and 29, 1938, and "Announcement of the Chairman," Aug. 9, 1938, *RGAB.* 20: 117, 118, 297, 1938; Declaration of H. M. Secretary of State for Foreign Affairs, Oct. 6, 1938 (*supra,* note 3). For the provisional revised text, see *RGAB.*, Supp., Feb., 1938; cf. *RGAB.* 20: 152, 1938.

[58] *Loc. cit., RA. L.* 18: 386–387, 1937–38; George, *op. cit.*, 175–176.

Yet coöperation of the administrations with the Committee's policies was beset with special difficulties inherent in the governmental control of rubber production. Such control was based, wherever possible, on the allotment of individual shares of basic quotas to planters, which corresponded to estimated production capacities of their holdings and from which percentages as fixed by the Committee could be exported.[59] But its operation was complicated by the great number of small holdings, largely in native hands, in the foremost producing countries. These holdings, because of their cheap operation and expansibility, constituted a most elastic part of rubber-planting, for which, moreover, statistics were quite inadequate at the beginning of restriction.

In Malaya, it was thus found necessary to establish two different schemes of supervision, under a common centrally controlled administration.[60] Exports from the estates could be checked directly in a few export ledgers; small holdings were controlled by means of allotted transferable export coupons which could be checked after their transfer to dealers. The coupon system made supervision practicable, but it lent itself to serious abuses.[61] Nevertheless, the Malayan system succeeded in keeping export totals close to their contingents. Similar systems seem to have worked satisfactorily in other British territories. Ceylon controlled all planting by the coupon system.[62]

In the Dutch territories, a similar scheme of direct control covered the European estates.[63] But a special régime had to be applied at first to most native holdings, for which the lack of statistics made estimates of production capacity impracticable. Limitation of their exports was undertaken by an indirect plan of gliding export duties; their rates were made dependent on price fluctuations with a view to absorbing progressively the additional profits from rising prices and counteracting the incentive to increased planting. Actually, however, the duties failed to keep step with the expansion of planting, since they did not outweigh the low cost of native production and marketing from areas underestimated from the first. Despite costly counter-measures of the colonial administration,[64] the resulting excess of exports became so great in 1935 that it threatened to overthrow the whole restriction plan and necessitated the upward revision of the Dutch basic quotas. Meanwhile, the administration proceeded with gathering exact statistics of native planting. With the counting of rubber trees finished in 1936, it could extend individual restriction on the basis of production capacity to all native gardens by 1937, and it succeeded in keeping exports within their readjusted limits.[65]

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[59] H. Lewis and E. G. Holt, *Rubber Regulation and the Malayan Plantation Industry* (Washington, 1935. U. S. Department of Commerce, Bureau of Foreign and Domestic Commerce, Trade Promotion Series No. 159), 1–2; George, *op. cit.*, 168–169. For details of control administration in the member territories, see their reports, published each year in *RGAB.*

[60] A rubber controller was appointed for all Malaya, with district officers as his direct subordinates; the governments united under the British Malayan government either coöperated with him through their departments or entrusted all control directly to him.

[61] Instead of transferring coupons with the rubber to dealers, many small holders preferred to sell them to other planters who could thus increase their production by paying competitors for not planting. This threatened to dislocate labor and revenues.

[62] George, *op. cit.*, 168; *loc. cit.*, *RA. NY.* 37: 182–183, 1935; R. H. Wright, "Basic Rubber Quotas and the Future," *RA. L.* 19: 4–5, 1938–39.

[63] Also native holdings in Java and Madura.

On the other hand, the concentration of more than ninety-eight per cent of the world's rubber output under four sovereignties virtually eliminated dangers to regulated production from outsiders. In fact, the increase of outside production from the beginning of regulation until the outbreak of the second World War was insignificant in proportion to total world production.[66] In particular, no independent plantations were started on a large scale by the tire and automobile manufacturers of the United States at a time when strategical considerations did not seem pressing. This was an indirect tribute to the policies of the International Committee on the part of the principal manufacturing interests. It implied that they preferred an adequate supply, at prices which, if not low, were safe from excessive fluctuations, to the investments and risks of independent rubber production of their own. The international rubber régime did not fail to arouse complaints both against the principle of limiting production and against what was claimed to be insufficient representation of manufacturers in its operation. But it did not meet the decided enmity of American manufacturing interests which they had displayed, with the backing of the United States government, against the preceding British restriction under the Stevenson plan.[67] The differences between the two schemes, especially the absence of a pivotal price and the provision for manufacturers' representation under the international régime, and also differences in the general economic conditions of the 'twenties and the 'thirties, may have encouraged coöperation rather than hostility on the part of manufacturers.

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[64] In order to reduce the export excess of the second quota year, it bought up planting rights from the estates.

[65] George, *op. cit.*, 169–172; *loc. cit.*, *RA. NY.* 37: 182, 1935; Tatistcheff, *op. cit.*, *RA. NY.* 38: 268, 1935–36.

[66] George, *op. cit.*, 175–176; "Should Restriction Be Renewed?," *RA. NY.* 41: 373, 1937. For recent plans for development of new rubber sources outside the Far East, see *RA. NY.* 50: 285–287, 1942.

[67] See especially H. Hoover, *op. cit.*

Doubtless the Committee promoted this attitude by what is recognized as its moderate policies, and by its preference for methods of negotiation in evolving and applying them.

Altogether, the rubber régime is an example of remarkably smooth functioning of international administration in a field where uncontrolled world trade appeared frought with serious dangers, while regulation was intended to support rather than to supplant free enterprise in production and in international trade. Like other international administrative régimes, it is characterized by an interplay of administrative and diplomatic processes in its operation. The Committee has been anxious to maintain its discretionary powers in principle. But it has actually resorted to negotiations both with business interests and with individual governments when this method appeared fruitful. More particularly, it has used methods of negotiation for purposes which are not within the scope of its formal powers, such as the arrangements made to facilitate ratification by Siam, to disregard unmanageable Dutch excess exports, and to expedite additional rubber purchases by the United States. Above all, it has used such informal methods in order to bring about amendments to the Agreement involving changes in the basic quotas, even beyond its formal power to propose amendments.

On the other hand, few parallels can be found among international administrative agencies to the extent and the incisive character of the regulatory powers of the Committee. Even where international agencies possess genuine powers of regulation, these have usually been confined to matters of a technical and non-political character, as exemplified by the regulatory powers of the International Air Navigation Committee.[68] Where international agencies have been granted such powers in economic fields, with far-reaching political implications, the basic policies have in some cases been laid down in the conventions themselves, only their execution and eventual modification being left to the agency. This has been done in the sugar régimes of 1902 and 1937; the latter, which also involves export limitation by a quota system, directly defines the export quotas in the basic agreement and permits the International Sugar Council only to raise or cut them under certain conditions and within definite limits.[69] The International Rubber Regulation Committee, on the contrary, and similarly the International Tin Committee, has been charged with determining virtually by itself the changing export contingents of each member country, under the conventional rate of allocation.

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[68] Cf. K. Colegrove, *International Control of Aviation* (Boston, 1930).

[69] Cf. my "The International Sugar Régime," in this REVIEW, Vol. 33, pp. 860–878 (1939).

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

In pursuance of a mail vote by the Executive Council, the officers of the American Political Science Association announce that the Association's thirty-eighth annual meeting will be held in Chicago, December 28–30, with headquarters at the Stevens Hotel. A major factor in the decision was the railroad situation likely to exist next December in various areas of the country, with a probability that prohibitive congestion will be less likely at Chicago than at other cities considered. The American Society for Public Administration also will meet in Chicago, starting December 26.

Committees of the American Political Science Association thus far appointed for the year 1942 are as follows:

1. *Committee on Program for the 38th Annual Meeting:* Harold W. Stoke (chairman), Harwood L. Childs, Denna F. Fleming, Clarence E. Ridley, Francis G. Wilson.
2. *Committee on Local Arrangements:* Roland Posey, Northwestern University (chairman); other members to be announced.
3. *Committee to Nominate Officers for 1942:* Charles M. Kneier (chairman), Robert R. Wilson, Benjamin F. Wright, Alfred B. Butts, Charles G. Haines.
4. *Committee to Consider Revision of the Constitution and By-laws of the Association:* Robert E. Cushman (chairman), Walter F. Dodd, John A. Fairlie, William O. Farber, J. A. C. Grant, H. C. Nixon.
5. *Committee on Relations with Local and Regional Societies:* Harvey Walker (chairman), Thorsten V. Kalijarvi, Charles Rohr, Schuyler C. Wallace, Charles C. Rohlfing, Herbert Wright, Roscoe C. Martin, John E. Briggs.
6. *Committee on Endowment:* William Anderson (chairman), Arthur N. Holcombe, Joseph P. Chamberlain, Lindsay Rogers, James T. Young, Frederick M. Davenport, John A. Fairlie, Charles E. Merriam, Walter F. Dodd, Frederic A. Ogg, Isidor Loeb, Charles G. Haines, William B. Munro, Charles A. Beard.
7. *Committee on the Personnel Service:* Harvey Walker (chairman), Herman C. Beyle, Arthur N. Holcombe, Samuel C. May, Evron M. Kirkpatrick.
8. *Committee on Publication of Proceedings:* W. Brooke Graves (chairman), Harwood L. Childs, Frederic A. Ogg.
9. *Committee on Public Law:* Oliver P. Field (chairman), Marshall E. Dimock, Charles G. Haines, James Hart, David Fellman.
10. *Committee on Legislation and Legislative Methods, with Special Reference to Congress:* George B. Galloway (chairman), Marshall E. Dimock, Meyer Jacobstein, Benjamin B. Wallace, Schuyler C. Wallace.
11. *Committee on the Publication of Election Statistics:* W. Reed West (chairman), Thomas S. Barclay, Harold F. Gosnell, E. E. Schattschneider, Catheryn Seckler-Hudson.

12. *Committee on Research:* Ernest S. Griffith (chairman), Karl Loewenstein, Walter R. Sharp, Benjamin E. Lippincott, Carl B. Swisher.
13. *Committee on War-Time Services of the Association:* Charles S. Hyneman (chairman); other members to be announced.
14. *Committee on the Social Studies:* Howard White (chairman); other members to be announced.
15. *Committee to Coöperate with the Advisory Board of the National Citizenship Education Program:* Marshall E. Dimock (chairman), Franklin L. Burdette, Kenneth Colegrove, Pendleton Herring, Peter H. Odegard, Catheryn Seckler-Hudson, Elbert D. Thomas, Joseph P. Chamberlain, John M. Gaus, Roscoe C. Martin, John B. Mason.

At the University of Chicago, Professor Herman Finer, of the London School of Economics and Political Science, is teaching during the spring and summer quarters, and Professor Charles E. Merriam has returned to give a course in American political theory during the spring quarter.

Professor Leonard D. White, of the University of Chicago, has been serving as consultant to the U. S. Civil Service Commission as a member of the Committee on Administrative Personnel, the chairman of which is Professor Emery E. Olson, of the University of Southern California.

At the University of Michigan, Dr. Jan F. Hostie, formerly of the Belgian Foreign Office and Secretary-General of the Central Committee for the Navigation of the Rhine, is serving as lecturer in political science during the current semester.

Dr. Edward H. Litchfield, chief of the division of research and training, Michigan Civil Service Department, has been appointed lecturer in public administration at the University of Michigan and will be in charge of the special curriculum in public administration.

During six weeks beginning February 1, Dr. Manley O. Hudson, Judge of the Permanent Court of International Justice, served as Ann Howard Shaw lecturer at Bryn Mawr College, also conducting the Bryn Mawr-Haverford joint seminary on world reconstruction. In six public lectures at Bryn Mawr, he discussed "Twenty Years' Development of International Law: 1919–1939."

While on leave from the University of Pennsylvania during the current semester, Professor Jewel C. Phillips is serving as state public service supervisor for public works reserve, a unit of the Federal Works Agency, and is making an inventory and six-year program of capital improvements for post-war construction in Pennsylvania.

Professor Lloyd M. Short, of the University of Minnesota, is serving as a member of the Committee on War-Time Requirements for Specialized Personnel, an agency of the National Roster of Scientific and Specialized Personnel.

During January, Professor John A. Fairlie, now teaching at Ohio State University, delivered an address before the faculty and students of the University of Florida on "War Administration in 1917 and War Administration in the United States Today."

Professor Eric Voegelin has taken leave from the University of Alabama to serve during the spring semester as visiting associate professor of government at the Louisiana State University.

Professor Philip Taylor, on leave from Syracuse University, is now a staff member of the Intelligence Division of the Army, and Professor John C. Russell, likewise on leave, is serving as executive assistant to Mr. Corrington Gil, of the Office of Civilian Defense.

Political scientists on the staff of the Library of Congress—some sixty in number—have organized a Political Science Club. The officers are: Harold D. Lasswell, president; Burnis Walker, secretary; Ernest S. Griffith, chairman of the program committee. Luncheons are held weekly on Wednesdays, at which time either a paper is presented or a panel discussion held.

Professors Frank M. Stewart, of the University of California at Los Angeles, John M. Pfiffner, of the University of Southern California, and Raymond G. McKelvey, of Occidental College, have been named directors of the Los Angeles chapter of the American Society for Public Administration.

Professor Weldon Cooper has resigned at the University of Alabama to accept an appointment with the U. S. Bureau of the Budget, and his work has been taken over by Professor Joseph M. Ray, formerly of the North Texas State Teachers College.

Mr. Meredith Gilpatrick, instructor at Beloit College the past three years, left at the end of the first semester to become a public opinion analyst in the Office of Facts and Figures and has been succeeded at Beloit by Mr. Landrum R. Bolling, formerly of Brown University.

While on leave from Bowdoin College during the second semester, Professor E. C. Helmreich is carrying on research on the relations of church and state in Germany since 1870.

Dr. Russell M. Story, president of Claremont Colleges Graduate School, died at Claremont, California, on March 26. A more extended notice will appear in the next issue of this Review.

At Monmouth College, a separate department of political science has been established, with Professor Robert W. McCulloch as chairman.

Dr. Claude E. Hawley, of the University of Florida, has been called to active service as a first lieutenant in the Army. He expects to continue in charge of the public administration section of the *Journal of Politics.*

At Colgate University, Dr. James A. Storing has been advanced from an instructorship to an assistant professorship.

Dr. Benjamin Gerig, associate professor of government at Haverford College and formerly with the League of Nations secretariat at Geneva, has joined the staff of the Wharton School, University of Pennsylvania, as lecturer in political science.

Professor W. Brooke Graves, of Temple University, has been granted a leave of absence to permit him to assume the post of recruiting specialist for the third district of the U. S. Civil Service Commission, consisting of the states of Pennsylvania and Delaware.

Professor Hans Kelsen is serving as Mary Whiton Calkins Visiting Professor at Wellesley College during the current semester.

Dr. Albert Lepawsky has been appointed director of training for civilian defense by the city of Chicago, but will continue his work as director of the Institute of Public Service.

Professor Harold Zink is on leave from DePauw University and is spending some time in the South.

Professor Joseph S. Roucek, of Hofstra College, will teach during the coming summer at the College of the Pacific and at San Francisco State College.

Under the editorship of Professor Georges Gurvitch, of the New School for Social Research and Columbia University, a new periodical to be known as the *Journal of Legal and Political Sociology* will make its appearance next autumn. The journal is intended to correlate sociological studies relating to law and politics, and will be published semi-annually until quarterly publication becomes feasible after the war.

In connection with a conference of the Commission to Study the Bases of a Just and Durable Peace, held at Ohio Wesleyan University in March, the Merrick-McDowell lectures were delivered by Mr. John Foster Dulles, Dr. Carl J. Hambro, Dr. Hu Shih, Dr. Leo Pasvolsky, Bishop Francis J. McConnell, and Dr. William Paton of London. All dealt with aspects of the future peace settlement.

Following the preparation of a report on the University's contribution to civilian morale, made in December, 1941, by a committee under the chairmanship of Professor William Anderson, the University of Minnesota appointed a University Defense Committee to take charge of University activities directly connected with defense and not already charged to some department or college of the University. Among other activities, the University Defense Committee has sponsored a course entitled, "War Comes to America," in which Professors Harold S. Quigley, Lennox A. Mills, and Joseph R. Starr are among the lecturers.

Henry Wells Lawrence, professor of history and government at Connecticut College at New London, died January 23, 1942. Born December 2, 1879, in Nyack, New York, he received his college training at Yale, being graduated in 1906, and receiving his doctorate in 1910, following a year's study at the University of Paris. Before beginning his work at Connecticut College in 1940, he held academic posts at the University of Vermont, Dartmouth College, and Middlebury College. His special field was American history, and his interpretations of it and of the current scene appeared in many syndicated articles and in his book, *The Not Quite Puritans.*

At a breakfast conference arranged by Professor Russell H. Fitzgibbon, of the University of California at Los Angeles, and held during the New York meeting of the American Political Science Association, it was decided to organize a group professionally interested in the Latin-American field from the points of view of government, politics, international relations, and law. As a result, a "Latin-American Conference of the American Political Science Association" was established, with Professor Fitzgibbon as chairman for 1942 and Professor Bryce Wood, of Columbia University, as secretary.

The statement on the official records of the exiled governments presented in the December issue of the REVIEW (p. 1158) can now be completed with respect to Greece and Yugoslavia. After leaving Crete and going into exile, the Greek government issued Nos. 167 and 168 of its official gazette (*Ephemeris tes kuberneseos*) at Johannesburg, Union of South Africa, under the dates July 20 and August 15, 1941. No. 167 includes certain earlier acts of the government at Kandia in Crete as well as at Alexandria and Cairo. No. 170 of the *Ephemeris* was issued at London under date of September 24, 1941. The Yugoslav government first resumed publication of its official gazette (*Službene Novine Kraljevine Jugoslavije*) at London under date of August 19, 1941. Included in this issue are (1) the royal proclamations of March 27, 1941, at Belgrade, announcing that Peter II had entered upon his duties as king of Yugoslavia and that he had appointed a cabinet headed by General Simović, (2) a royal proclamation of April 16, 1941, at Athens, and (3) royal decrees and other documents issued at Jerusalem from May 3 to June 3, 1941.

A trust, to be known as "The W. K. McClure Foundation for the Study of World Affairs," has been created by Dr. Wallace McClure, of the State Department, in memory of his father. The memorial and trust make available to a board of trustees the McClure family residence in Knoxville, Tennessee, which will be used as a library, study hall, and club house for groups devoted solely to education in world affairs and to the promotion of intelligent and responsible citizenship. The Foundation now serves as headquarters for a junior group open to students from the University of Tennessee and near-by educational institutions, and a senior World Affairs Study Group which, under the leadership of nationally recognized authorities, is considering during 1942 the subject of "Winning the Peace."

The program of the Fourth Conference of Midwest Political Scientists, to be held at Spring Mill State Park near Mitchell, Indiana, May 15–17, will be centered on America's participation in the war. As tentatively arranged, it provides for sessions on: (1) The Rôle of Political Scientists in Time of War—in the university, in the armed forces, and in government service; (2) The United States at War—our military effort, and the functions of the university in war effort; (3) Coördination of Governmental Research in the Middle West. Informal group meetings are to be scheduled on such topics as: (1) The War Powers of the President; (2) Organization of Administrative Management in the Midwestern States; (3) Methodology of Studying Voting Behavior; (4) The Conflict of Ideologies—Democracy vs. Totalitarianism; (5) American Responsibility for Winning the War and Preserving the Peace; (6) Training for the Public Service; (7) Problems of Administration Arising from War Industry; and (8) War and the Political Science Curriculum. The members of the program committee are: Arthur W. Bromage (chairman), Ivan M. Stone, Willis Swartz, Howard White, and W. H. Wickwar.

The twenty-third annual meeting of the American Council of Learned Societies, held in Philadelphia January 30–31, was attended by the two delegates of the American Political Science Association, Professors Joseph P. Chamberlain and Frederic A. Ogg, and the concurrent meeting of the secretaries of societies by Professor Kenneth Colegrove. Principal features of the meeting included a session devoted to discussion of "Scholars and Scholarship in War-Time," and the presentation and discussion of an extensive report of a Committee on Educational Trends in the Humanities. After further revision, the latter report will be published. At a dinner meeting, a *Festschrift* entitled "Studies in the History of Culture" was presented to Dr. Waldo G. Leland, director of the A. C. L. S., in recognition of his outstanding services to the Council and to the interests of scholarship over a long period of years. In the imposing volume, the American Political Science Association is represented by a paper on "Co-operation in the Study of Political Science," contributed by Professor Chamberlain.

Establishment at Princeton University of an undergraduate program of study in American civilization was announced in January by President Harold W. Dodds. Evolved after long consideration by faculty committees, the plan is designed to achieve an understanding of the traditions of this country, "not by preachment, but by offering a field of study in the American heritage." "The program will follow two comparatively new trends in higher education, first, the cutting across of one-time impenetrable departmental boundaries, and, second, the lending of realism to learning and the encouragment of individual investigation provided by the conference method of instruction." It "will make use of existing facilities in the departments of art and archaeology, economics, English, history, philosophy, and politics. A student admitted to the program will select one of these departments as his major field of interest and will fulfill the normal departmental requirements. In so doing, however, he will emphasize, in his course of study, the American aspects of this particular field and will write his senior thesis on a topic relating to American civilization. In addition, he will take cognate courses in the American field in other departments. In his senior year, he will participate in a conference course which will integrate his study of American civilization."

The American Library Association created last year a Committee on Aid to Libraries in War Areas, headed by John R. Russell, librarian of the University of Rochester. One of the most difficult tasks in library reconstruction after the first World War was that of completing foreign institutional sets of American scholarly, scientific, and technical periodicals. The attempt to avoid a duplication of that situation is now the concern of the Committee. Many sets of journals will be broken by the financial inability of the institutions to renew subscriptions. As far as possible, these will be completed from a stock of periodicals being purchased by the Committee. Many more will have been broken through mail difficulties and loss of shipments, while still other sets will have disappeared in the destruction of libraries. The size of the eventual demand is impossible to estimate, but requests received by the Committee already give evidence that it will be enormous. With an imminent paper shortage, attempts are being made to collect old periodicals for pulp. Fearing possible loss in this way from the already limited supply of scholarly and scientific journals, the Committee hopes to enlist the coöperation of subscribers to this Review in preventing the sacrifice of this type of material to the pulp demand. Questions concerning the project, or concerning the value of particular periodicals to the project, should be directed to Wayne M. Hartwell, executive assistant to the Committee on Aid to

Libraries in War Areas, Rush Rhees Library, University of Rochester, Rochester, New York.

A project which has drawn the attention and interest of political scientists during past months is the National Citizenship Education Program —a nation-wide plan for preparation of the foreign-born for the duties and responsibilities of citizenship. Sponsored by the Immigration and Naturalization Service of the Department of Justice, in coöperation with the Work Projects Administration and the Office of Education, the program has elicited such support that all but four states have submitted plans and received funds for coöperating in it. More than seven thousand citizenship teachers have been requested for service on projects approved so far, being designed to provide instructional opportunities for approximately 700,000 foreign-born adults. It is estimated that approximately 350,000 students are already enrolled in the citizenship education courses —fifty per cent more than ever before in the history of Americanization work. Many states have developed a parallel program for those who have already acquired citizenship and for native-born Americans, thereby supplementing the program intended for America's five million aliens. Members of political science departments and their former students can render valuable assistance to the program. To the political scientist, one of the most interesting phases of N.C.E.P. is the philosophy behind it. Teacher education, preparation of student materials, and class work—all are approached from the viewpoint of participation by the student in an ever-widening range of activities as fast as his capacities permit. There is a deliberate and heavy accent on learning democratic principles by living them. Every day, face-to-face activities are associated with the more abstract principles of government which they represent—the latter thus being endowed with a real meaning understandable to any foreign-born student because it is linked up with his own experience. As the N.C.E.P. gathers momentum, professional men may well watch this great effort toward unification through education.

BOOK REVIEWS AND NOTICES

On the Agenda of Democracy. By Charles E. Merriam. (Cambridge, Mass.: Harvard University Press. Pp. xiv, 135. $1.50.)

No more fitting tribute could be paid to the memory of a great liberal than has been paid to E. L. Godkin in the establishment of the Godkin Lectures on "The Essentials of Free Government" at Harvard University. It is altogether fitting and proper, too, that Charles E. Merriam should have been asked to deliver these lectures last year. Merriam's life, like that of Godkin, has been devoted to the study and the strengthening of American democratic institutions. Both represent the liberal tradition at its best, and through the work and lives of both there shines that rare jewel—an open mind.

The lectures herein recorded are divided into two main parts: the first —"Streamlining Democracy's Structure"—includes lectures on "Democracy and Law-Making," "Democracy and Public Administration," and "Democracy and World Order." The second part, under the general heading "Recasting the Program of Democracy," deals with "Democratic Planning of National Resources" and "Democracy's New Guaranties of the Pursuit of Happiness." The volume concludes with a brilliant and moving Epilogue, setting forth the essential thesis of a free society.

It would be useless to attempt in a brief review to summarize the contents of the book. The lectures themselves are models of condensation. Something of the general theme of these can, however, be indicated by an outline of the problems which Professor Merriam includes as "On the Agenda of Democracy."

As between the affirmative and negative schools of political theory, Professor Merriam has no hesitation about aligning himself with those who represent the view that government is not merely a necessary evil, but, as Aristotle long ago insisted, an agency for the promotion of the good life. "If we recede from the theory that the government is a necessary evil," he says, "and advance to the doctrine that government is a positive good, the doctrine of organization is far simpler."

Professor Merriam gives no aid and comfort to those who insist that freedom and efficiency are incompatible. On the contrary, he insists that "freedom brings efficiency more fully and effectively than slavery. No one even considers a slave organization of factories, mines, and farms in these days"—nobody, that is, excepting the Nazis and their coadjutors. The ultimate triumph of democratic institutions would probably be found in the very fact that Professor Merriam stresses that democratic government and good government are synonymous.

It is refreshing to be reminded again of the basic purposes for which governments are legitimately instituted. These purposes have been set forth eloquently in the Preamble to our own Constitution. "Some day it will dawn upon us that all the clauses of the Preamble are worth fighting for." Nor does the author take any stock in the dangerous half-truths that democracy and political power are opposites. No people has ever lost its freedom by giving to its responsible governors powers adequate to the problems they had to face. The essence of dictatorship is not the extent of power conferred, but the terms on which this power is exercised

So long as the ultimate goals and purposes of the state are defined in response to the needs and aspirations of the people, and so long as the government can be held to account for what it does or fails to do, we need have no fear of power. "Paradoxically," says Merriam, "the very fear of dictators, so-called, was turned into an argument against protective forms by which alone the domination by dictators may be prevented from extending over America. . . . Liberty is not secure in proportion as government has no power."

There is a tendency among narrow-minded and timid men to associate dictatorship with strong, and democracy with weak, leadership. The history of our own country and of England contains abundant material for the refutation of this canard. "We now know that leadership is a more widely distributed capacity than was earlier supposed. . . . The modern world is filled with leaders who came from nowhere." The very fact of dictatorship is an admission of the failure and lack of leadership. For if men can lead their people, they have no need to drive or to enslave them. "Leaders who choose themselves and are accountable only to themselves are not the answer to the continuing problem of the organization of political society, but a declaration of bankruptcy." It is such basic principles that illumine all of these lectures.

But Professor Merriam is not content to indulge in abstractions or generalizations. There is here a definite program of action. In discussing democracy and public administration, he deals, in a degree of detail that is surprising in so brief a volume, with the abolition of the spoils system, the position of the executive, and the development of administrative management. He sets forth two great objectives of democracy in the field of world relationships, namely, "the security of a jural order of the world in which decisions are made on the basis of justice, rather than violence," and "the fullest development of the national resources of all nations and the fullest participation of all peoples in the gains of civilization."

Enough has been said to indicate the spirit and nature of the contents of this book. The volume will repay study by students of government, however old or young they may be. It is fortunate for us in these days that our elder statesmen, of whom Professor Merriam is one, are still active in the practical affairs of the nation. Long may they and their kind endure!

PETER H. ODEGARD.

Amherst College.

Democracy Through Public Opinion. BY HAROLD D. LASSWELL. (Menasha, Wisconsin: George Banta Publishing Company. 1941. Pp. 176. $1.50.)

This is one of the most thought-provoking of the recent books on democracy. Perhaps because the form given the material was developed in numerous lectures and discussions, and because the book is not a "war baby," it is characterized by a tone of calm reasonableness that enhances its value.

Professor Lasswell has attempted to clarify the place of public opinion in a democracy. He defines democracy as the practice of justice by majority rule. The rôle of public opinion in supporting democracy is declared to be, first, to make permanent demands for justice and majority rule, and second, to make provisional demands for popular policies consistent with the permanent demands. The improvement of discussion, the development of more wholesome individual attitudes, the improvement of the quality of leadership, and the maintenance of political and economic balance are presented as being among the means which may lead to the desired end.

Some of Professor Lasswell's specific suggestions are unusual and of questionable practicability on any large scale. For example, he advocates the use of the technique of free association for diagnosing the working of the individual mind and to diminish the effect of bias. The psychology taught in the schools will have to be made much more practical before a technique of this nature could be used enough to have any noticeable effect on public opinion. The author's presentation of the proposal that we require our politicians to have professional training is about equally removed from the reality of the immediately realizable. Among the specific proposals of the author, one of the most practicable is the suggestion that we can improve public discussion by having individuals act as clarifiers. In round-table discussions, with which Professor Lasswell has had much experience, one person is sometimes assigned to such a rôle with good results.

Professor Lasswell sees in modern states a trend toward job security, the moderation of great differences in individual income, and the psychological abolition of unemployment. His treatment of psychological factors in democracy is the chief difference between this book and others on the subject. Many other writers have told us that we must modify our economic system and eliminate its grosser injustices, but few others have seen as clearly as does Professor Lasswell the importance of the individual's desire for deference. Reciprocity of respect among self-respecting individuals is a basic element in democratic society. Such a healthy relationship is necessary for the development of a public opinion capable of sustaining democracy. This restatement of the basic principle of democracy, respect for human personality, is the most stimulating contribution of the book.

CHARLES W. SMITH, JR.

University of Alabama.

Arsenal of Democracy. BY BURNHAM FINNEY. (New York: Whittlesey House. 1941. Pp. x, 284. $2.50.)

America Prepares for Tomorrow. BY WILLIAM DOW BOUTWELL AND OTHERS. (New York: Harper and Brothers. 1941. Pp. xv, 612. $2.65.)

United We Stand! BY HANSON W. BALDWIN. (New York: Whittlesey House. 1941. Pp. x, 364. $3.00.)

These books are worthy representatives of the many volumes written to prepare the minds of Americans in some measure for the tasks of war. Each of the three is very different from the others in method of presentation, but all are alike in their basically objective, rational, and even-tempered analysis of military preparation. It is no slight thing that this spirit pervades the writers on such subjects. This is an attitude worth preserving in the very heat of war; for clear thinking is a potent weapon. Yet in the few brief months since these books appeared, great and manifold events have changed our ways of thinking and our vocabulary as well.

Mr. Finney, editor of *The American Machinist,* writes for "the American who wants to know more about the defense program." The information was timely and up to date when it was written, in March, 1941. The problems that then called for a "popular" presentation to the public now are either commonplaces or have been superseded by issues so much greater that they seem trivial indeed.

America Prepares for Tomorrow was written "to assist the puzzled student, official, and citizen in their efforts to an orderly understanding of the national defense program." The volume was proposed in the fall of 1940 and written within the next six months. For this editorial *tour de force,* chief credit is due W. D. Boutwell for leadership and to his collaborators for their very high degree of coöperation. In spite of the difficulties that beset the authors, they achieved their purpose admirably, and their book deserves the wide use that has been made of it.

The volume is factual and descriptive. It covers all of the major aspects of the defense program of 1940–41. The range is wide, and since comprehensiveness and timeliness were stressed, the volume must now be extensively revised to be most effective for class-room purposes. The authors performed a public service in quickly bringing together data on national defense at a time when bases for intelligent opinions were greatly needed. Much that they have to say constitutes background information of continuing value for an understanding of current problems. A few additions to each chapter would bring the volume up to date. A new edition of the work seems in order.

Hanson Baldwin begins his book with the statement: "Nineteen forty-one may well be America's most crucial year." Within these twelve months, the author saw, a choice would be made for war or precarious peace. He therefore addressed himself to examining "the political and economic—but particularly the strategic and military—aspects of hemisphere defense."

Reviewing this book a year after the author finished his manuscript gives hindsight full scope. Hanson Baldwin withstands this test. While no seer, he is a sound and sensible fellow. The vindication of many of his views by events suggests that all his opinions are worthy of very careful attention. For example, his general estimate of Japanese strength and of the situation in the Philippines is borne out by current history. One thinks of Pearl Harbor when reading: "But for one thing the army and navy cannot be excused—uncoördinated effort. . . . It is essential; it is imperative" (p. 272). The *Hood* comes to mind when we read of Germany's excellent gunnery in target practice witnessed by our navy at a West Coast port. "The practice made us appear novitiates" (p. 166). There is food for thought in this comment: "The fetish of mass must not dominate our military thought. It is possible to combine bulk with quality, but we have not put our feet upon that path" (p. 263). In his estimate of Russia, however, Baldwin is no better than the rest. Would he say today that Russian man power is "ignorant, static, without that spark of enthusiasm and initiative that make great armies. Russia's army is distinctly not great." All in all, however, this volume adds to Baldwin's stature as a thoughtful and well-informed commentator on military problems.

PENDLETON HERRING.

Harvard University.

Democracy Marches. BY JULIAN HUXLEY (New York and London: Harper and Brothers. 1941. Pp. x, 126. $1.50.)

Democracy and National Unity. EDITED BY WILLIAM T. HUTCHINSON. (Chicago: University of Chicago Press. 1941. Pp. xi, 140. $1.00.)

These two short volumes must be placed along with the mounting number of books dealing with the nature, the crisis, and the future of democracy. Huxley's work is different because it is the republication of talks made by broadcast to the American people. The purpose of the work is to reassure the American people as to the reality of British democracy, and in this effort the author faces frankly the problem of the British class system, and the existence of monarchy. British democracy is not perfect, he says, speaking of the class system; "All I am concerned with here is to try to make clear that it is not incompatible with a reasonable amount of democracy" and that it has some merits (p. 12). He suggests that color and nationality take the place to some degree in the United States of the class system in Britain. To prove his point, he cites discriminations against Negroes and recent immigrants, as well as the class distinctions existing in the East (p. 11). He implies, it would seem, that class snobbery is not worse than Tammany Hall and the Ku Klux Klan (pp. 14–15).

Basically, Huxley argues for a new social service democracy, pointing with pride to the development of state-administered services in Britain. Such a new state will explode the present political system, "which is really a myth surviving from an earlier age, with its divisions of parties into the two hostile camps of property and capital versus labour and a jealous proletariat . . . " (p. 40). Admitting that the Nazis have much to their credit in the organization of the social service state, he contends that we must, in distinction, combine the democratic with the social service trend (pp. 34–35). The democratic and planned state must not be swept away by arbitrary administrative developments.

Six distinguished Americans contribute to the Walgreen Foundation lectures under the title of *Democracy and National Unity.* Thomas Reed Powell discusses "Conscience and the Constitution," exploring particularly compulsory military service and the question of the flag salute case. Henry F. Pringle examines "Politics versus National Unity"; Herbert Agar states his views on "The Press and National Unity"; Harold G. Moulton discusses the "Economic Essentials of National Unity"; Matthew Woll contributes "The Outlook for Labor"; and Oliver E. Baker outlines the problem of "The Farmer and National Unity."

No political scientist will fail to be interested in the essay by Powell, and the contributions of Moulton and Baker are certainly outstandingly important at the present time. However, the value of the essays is unequal, and political scientists will hardly be impressed with the analysis of "Politics versus National Unity." Herbert Agar denies, for example, that America is united by any cultural ties; he asserts that our basis of unity is simply the idea of freedom or democracy. He forgets, it would seem, that the value of freedom of the press is as good as the freedom of those with whom he disagrees. Moreover, many might be disinclined to stress the peculiar task of editors in saying what the world ought to be. On the other hand, the statement of the American agrarian problem is remarkably forceful as it comes from Baker's pen; and the economic analysis offered by Moulton gives some ground for hope in the gradual development of the military economy of the United States. "It remains true, however, that the income of the labor population as a whole can be maintained on a substantially higher level during the war emergency than it has been in recent years. Incidentally, the real wages of labor as a whole rose during the first World War period," asserts Moulton (p. 75). On the other hand, Baker points out that a gradual decline in population and an increase in the burden of taxation give warnings for the future, both to the urban and to the rural population.

FRANCIS G. WILSON.

University of Illinois.

The United States and Civilization. BY JOHN V. NEF. (Chicago: University of Chicago Press. 1942. Pp. xviii, 421. $3.00.)

Great responsibilities now rest on our shoulders. Two-thirds or more of the people of the world expect us to furnish the leadership and a considerable portion of the resources for winning this war, and to furnish the leadership and no small part of the resources for creating the new world order that should follow. We are justified in feeling reasonably sure that the United States will not walk out on the war. Can we be equally certain that it will not walk out on the peace? It did last time, and as a consequence must carry a large share of the blame for the present conflict.

If the world is ever to have anything remotely close to a durable peace system, this country must assume a leading rôle in its establishment and maintenance. The groundwork has been laid in the United Nations movement. It is now our task to guide that movement into a new world society —a world society free from selfish political and economic nationalism, militarism, and racialism. Thus our responsibilities are not exclusively economic and political. If a new civilization is to come out of this war, the United States to a great degree will determine the character of that new civilization. It is particularly important at this time, therefore, for us to take stock of ourselves, reëxamining old values and considering new ones.

Professor Nef is interested in moral philosophy. His book analyzes the past and recommends for the future. It is divided into three parts—"Civilization at the Crossroads," "Ends of Civilization," and "Means of Approach." Students of political science will be especially interested in his discussion of democracy and totalitarianism in Chapter IV and in his chapters on "The Future of Democratic Government" and "The Future of International Justice." Professor Nef believes there is hope for the discovery of a "new type of civilization, nobler and more altruistic than any of the past" (p. 375). This hope depends for its fruition upon the survival of democracy, however, and not upon any form of totalitarianism. But if democracy is to survive, there must be less absorption with the material and more with spiritual values, without which the material values themselves may be lost. "Materialism and individual selfishness are America's greatest weaknesses" (p. 356). We must, therefore, try to rescue from the democratic creed of the past "the passion for justice and for the dignity of the human being which the constitutional form of government at its best supported as no other political régime has done" (p. 352).

Professor Nef is alarmed about the future of constitutional government, as should be every American who cares about the future of civilization. Scholars in every field—economics, history, philology, chemistry, geology—must take up the challenge. The survival of creative scholarship depends upon the maintenance of democracy. Liberty is essential to intellectual inquiry. With liberty in totalitarian eclipse on the Continent, the survival of Western thought and art depends on America. The American universities are the guardians of Western culture and, as such, have a duty to keep democracy alive. Democracy may or may not be the best form of government ever devised; it is enough that it is superior to the alternative now confronting us. The alternative, whether it be national socialism or fascism or communism, is despotism.

The author does not undertake to outline a plan to make World War III less likely beyond the suggestion that peace must be preserved by force. In the words of Pascal, he says we should "make justice strong and force just." The success of a peace system depends upon maintenance among the democratic peoples of a belief in values worth fighting for. He would have the nations of the world agree to combine in the use of force "against any nation which breaks the peace for the sake of conquest" (p. 389).

It is good to have a book of this kind at this time. There is able critical analysis in it and sound advice. Scholars in all fields should read it.

E. ALLEN HELMS.

Ohio State University.

Constitutional Government and Democracy. BY CARL J. FRIEDRICH. (Boston: Little, Brown and Company. 1941. Pp. xix, 695. $4.00.)

This book is not a mere routine revision of the author's *Constitutional Government and Politics.*[1] Although the general structure of the earlier edition remains, changes in organization and a good deal of rewriting throughout make the present edition a clearer, more coherent, and better integrated book.

A new opening chapter traces the historical growth of the idea of constitutionalism, viewing a constitution as the process by which power is divided and governmental action is effectively restrained. Many chapters have been considerably expanded and in each case improved. Most conspicuous among these are the chapters on the amending power and revolution, the constitution as a political force, judicial review, executive leadership, press and radio, and direct popular action. In most cases, German material has been cut down to make room for more American and English material and for occasional references to the British Dominions. An expanded and more closely reasoned chapter on methodology now stands at the end rather than the beginning of the book. It contains a convincing defense of political science as a science, and is one of the most suggestive chapters. The seventy-five-page bibliography has been brought up to date and remains a model of what bibliographies ought to be but rarely are.

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[1] See this REVIEW, Vol. 31, pp. 953–957 (Oct., 1937).

The book now opens with a vigorous attack on the concept of the state, which Professor Friedrich insists is meaningless and confusing for modern democratic thought because, since the time of Aristotle, it has carried with it organic, static, and formalistic connotations. One can agree with Professor Friedrich that the word *state* has often been in bad company, and one can willingly acknowledge that Professor Friedrich gets along very well without it; but when he says that the word suggests "some kind of magical superentity," he is disregarding the fact that many contemporary writers have a concept of the state entirely devoid of the connotations to which he properly objects. However, Professor Friedrich's rejection of the term is closely related to his whole realistic and functional approach. The same approach leads him to such useful theses as that bureaucracy is "the core of modern government," that the rôle of parliament is not only deliberation but also integration, that power is a relationship rather than a substance, and that power relationships involve both consent and restraint.

One familiar thesis which Professor Friedrich accepted in 1937 he now rejects. He maintains, in opposition to his earlier view and to the prevailing view, that "agreement on fundamentals" is not a necessary condition of constitutionalism. It seems evident that the maintenance of constitutional government does not necessarily require a people so "fundamentally at one" as Balfour apparently believed the English to be; but in contending that the agreement to use constitutional methods is the *only* essential agreement, Professor Friedrich seems to be making a purely verbal argument. For the agreement to use constitutional methods has never existed *in vacuo;* it has always—even in Switzerland—been associated with some other kinds of fundamental agreement.

Several errors may be noted: "no [American] president has ever been elected by a minority" (p. 376); "those who contribute money to campaign funds are a . . . cross-section of the electorate" (p. 376; Professor Overacker's reports seem clearly to indicate the opposite); the date of the Act of Settlement is given as 1700 (p. 174).

Professor Friedrich's control of an unusually broad range of historical and contemporary material and his skill in handling theoretical concepts made the first edition a most important and provocative book; the second edition is even better.

JOHN D. LEWIS.

Oberlin College.

On Social Freedom. By John Stuart Mill. Reprinted from the *Oxford and Cambridge Review,* June, 1907. With an Introduction by Dorothy Fosdick. (New York: Columbia University Press. 1941. Pp. 69. $1.00.)

The Man versus the State. By Herbert Spencer. With an Introduction by Albert Jay Nock. (Caldwell, Idaho: The Caxton Printers, Ltd. 1940. Pp. xiv, 213. $2.00.)

The first of these books is a republication of an inaccessible and neglected essay of Mill. It should contribute a great deal toward a better appreciation of the extent to which Mill's position had shifted during his late years. The second book includes four essays originally published in 1884 under the title *The Man versus the State* and two others entitled *Over-Legislation* and *From Freedom to Bondage.*

In view of the fact that both Spencer and Mill took as their point of departure the early Utilitarian doctrine, the divergence of their views concerning the relation of liberty to authority is remarkable. It would be even more astonishing if that doctrine itself had not provided one of the reasons for this disparity by its lack of consistency. The early Utilitarians denied the working out of natural justice in politics and law, while insisting that it is realized in the economic field through the free operation of the competitive market. Taking the latter position as a starting point, and bolstering it by pseudo-scientific analogical reasoning, Spencer became the most extreme exponent of *laissez-faire.* Regarding man as an isolated being with self-limited interests, he contended that every law curtails freedom and that the measure of liberty is determined by the relative presence or absence of law. Mill moved in the other direction, becoming more and more doubtful about the validity of the allegedly unalterable laws of economics and about the efficacy of the mild legal reforms which the early Utilitarians proposed for the righting of social wrongs. In the present essay, Mill admits that liberty is in less danger from law than from certain non-legal restraints. Mill sees that the unrestrained pursuit of self-interest by some is inconsistent with the freedom of others and may be anti-social in its effects. He does not, however—as Miss Fosdick points out in her excellent introduction—"see the full implication of his own admissions. . . . Since liberties conflict, and since some in any group of liberties may imperil the general welfare, liberty or any group of liberties cannot be defended as a final good. Liberties must rather be defended (as Mill had in part argued) as conditions of welfare. As such, conflicting liberties must be weighed among themselves and then be judged in relation to other essential conditions of life" (p. 20).

While Miss Fosdick has written an illuminating and critically analytical introduction to Mill's essay, Mr. Nock swallows Spencer's doctrine hook, line, and sinker. Decrying the trend toward "Statism," which, according to him, manifests itself in everything from the income-tax amendment to the New Deal, Mr. Nock recommends Spencer's essays as the best available antidote. Only someone whose mind has been closed for at least fifty years could possibly be as eager to resuscitate a "dead horse" and be as hopeful about its possibilities as is Mr. Nock. This leads to but one conclusion. If the opposition to the New Deal has to rely for its theoretical foundation on something that squares no more with the facts of present-day life than the discredited position of Spencer, the New Dealers should not have to worry on that score.

HENRY JANZEN.

Hamilton College.

Censorship 1917. BY JAMES R. MOCK. (Princeton: Princeton University Press. 1941. Pp. 250. $2.50.)

It is a safe bet that Byron Price has a well-thumbed copy of Dr. Mock's book on his bedside table. It is even a better guess that college professors called suddenly to lecture on war-time public opinion, are even now scribbling notes from its pages; and if they have not already done so, Army and Navy public relations men should con the lessons spread out before them in *Censorship 1917.*

This is by way of saying that the first thoroughly comprehensive picture of American censorship in World War I has appeared in print at a time when it could best serve a public purpose. Dr. Mock probably did not anticipate Pearl Harbor, yet he must have understood that war clouds in the heavens meant we were in for a squall. His prescience in assembling the story of the government's control of script, print, picture, and oral utterance should earn him the thanks of those who have imagination enough to make use of the book to improve upon our 1917–18 censorship structure and to guard against past mistakes.

While Dr. Mock and Cedric Larson summarized First World War censorship in Chapter II of *Words That Won the War,* the volume under review not only explores the subject more intensively, but treats many additional phases. The work of the Censorship Board has never been treated so adequately; indeed, it has hardly been detailed at all in past contributions. Dr. Mock's analysis here is a major accomplishment. His unfolding of the story of "banned books" and the tussle over Hollywood feature films brings to light much new material.

Dr. Mock pursues his way so evenly that sometimes the importance of the facts he has dredged up after patient research are not sufficiently high-lighted or hall-marked for the lay reader. In "Cables and Telegrams," for example, he reports the order on overseas communications issued by censors to "prevent spreading of false reports or reports likely to cause directly or indirectly dissatisfaction with America's cause." In making certain that this country was "correctly reported to the world," the censor turned propagandist. Dr. Mock holds positive views on the mixing of the two functions, but he does not reveal them in this volume. Neither does he specifically summarize what were the obvious shortcomings of the 1917 censorship and what were the strong points of which we can approve in the light of later events.

While *obiter dicta* are lacking in *Censorship 1917*, Dr. Mock does reveal his concern over the possibility of a carry-over of censorship controls into a peace-time world. He closes with the following: ". . . Americans, remembering the evils of the censorship carry-over from World War I, should steadfastly resolve, in the midst of whatever crisis, that with the end of the crisis civil liberty in this country shall have a new birth. If repression continues after the war is over, we shall have lost the very ideal for which we fought."

RALPH D. CASEY.

University of Minnesota.

Our Landed Heritage; The Public Domain, 1776–1936. BY ROY M. ROBBINS. (Princeton: Princeton University Press. 1942. Pp. xii, 450. $5.00.)

Under the provisions of the Taylor Act of 1934, the President withdrew all public lands from private entry (February 5, 1935). The opportunity for individual settlement on the public domain being thus brought to a close, Mr. Robbins considered the time ripe for a synthesis of the history of the public lands of the United States. Ten years a student of public lands questions, Mr. Robbins had qualifications for this task which were further strengthened by an opportunity to study public reaction to the conservation movement in the Rocky Mountain and Pacific Coast states, an opportunity made possible by a grant-in-aid from the Social Science Research Council.

This meaty volume is divided into four parts. Part I—"The Settler Breaks the Way"—carries the story from the grievance voiced in the Declaration of Independence against the king for his effort to "prevent the population of these States" to the free land and free soil movements of the 'forties. In Part II, "The West Welcomes the Corporation," and in doing so lures the European, finds the slaveocracy opposed to free land, makes an alliance with industry, enjoys a boom, and endures the hardships of a second great panic (1857). In Part III, "The Corporation Triumphs" —particularly the railroad corporation. Although the Homestead Act of 1862 was heralded as one of the greatest democratic measures of all time, its enactment was one thing, its operation was another. Conservation is the theme of Part IV. Theodore Roosevelt forces the issue; the West is defiant; Taft pushes on; and the West is conciliated.

The author feeds hundreds of quotations into his volume in such a way as to indicate his mastery of them, and they greatly enliven his work. In a literary sense, he is at his best in describing, chiefly by the judicious use of quotations from eye-witnesses, boom times and panic on the frontier. Here he presents a picture at the same time clear and interesting. Occasionally the reader experiences some difficulty in finding his way through the assembled mass of factual detail; but, considering the number of Congressional enactments and administrative regulations bearing upon the subject, some confusion to the reader may be unavoidable. Yet it may be suggested that a more liberal use of summaries might have further clarified some of the topics presented. This criticism is not intended to suggest that the author does not reveal the land aggressions of the frontiersman, the rapacity of the corporations, the sectional and economic conflicts, and the tardiness of Congress in enacting appropriate legislation to develop and conserve "Our Landed Heritage." Furthermore, he weaves his story into the fabric of American history, thus enabling the reader to catch the broader meaning. For example, he clearly sets forth the reasons for the early opposition in the East to Western development and the considerations which caused the Old South to favor that development, and with equal clarity he shows why these two sections reversed their positions just prior to the Civil War.

Mr. Robbins gives evidence of careful research and scholarly balance on practically every page of his work. He seems to make use of every available authority and, very properly, he does not disdain local Western newspapers such as the Copper Mountain *Miner*, the Laramie *Boomerang*, and the Walla Walla *Weekly Statesman.* He is careful in apportioning praise and blame, thus avoiding the common mistake of visiting condemnation upon classes of persons for the mistakes and frauds incident to the disposition of the national domain. His conclusions are marked by scholarly restraint. Indeed, this reviewer believes that the author would be justified in reaching more and stronger conclusions. Viewing the work as a whole, it may be said that it fills a definite need and fills it so satisfactorily that there is no reason why another authority should undertake the same task for some time to come.

CLAUDIUS O. JOHNSON.

State College of Washington.

Investigating Municipal Administration. BY HAROLD SEIDMAN. (New York: Institute of Public Administration. 1941. Pp. 215. $2.50.)

Dr. Seidman writes as an important employee of the New York City Department of Investigation and as a candidate for a degree at Columbia University under the tutelage of Dr. Luther Gulick. The resulting doctor's dissertation is a history of the Department from its inception in 1873 to the present, plus a brief discussion of departmental procedure, and a still briefer evaluation of similar staff agencies in other cities.

Possibly the greatest value of the book lies in its discussion of the controversial value of official staff agencies and official critical agencies within a government. To be sure, the history of the Department is of interest, and the author carries that history through its turbulent evolution from its origin in the Tweed scandals as Commissioners of Accounts, then as the Commissioner of Accounts, Department of Investigation and Accounts, and finally Department of Investigation. Across his pages march familiar and powerful names in "reform"—Mitchel, Fosdick, Bruere, Wallstein, Blanshard, Seabury. The reviewer read these chapters with a twinge of nostalgia for his youth—even for the abuse of those then English-trained accountants in the Department who disdained adding machines and more than disdained the services of what would now be called "junior administrative assistants," who couldn't make a column of figures foot the same twice in succession.

This history brings into relief two needs in government—the need of the principal executive (in this instance the mayor) for staff aid in the investigation of the problems of administration; and the need of citizens and taxpayers (or their representatives) for critical appraisal of the conduct of public business. Sometimes these separate and distinct needs are confused and an effort is made to meet them by the creation of a single official agency. By and large, the present Department of Investigation has been a staff aid to the mayors of New York City. When these latter have been able and honest, the Department has also served as an agency of investigation on behalf of the public. When the mayors have been something else, the Department has been a whitewash brush or nothing at all. Seabury evidently sensed the existence of two unrelated services—aid and criticism—when he urged that the Department be made responsible to the board of aldermen instead of the mayor, although his advice was not followed. The Massachusetts legislature had the same thought when it authorized the Boston Finance Commission as independent of the city government, as did the voters of Detroit when they made their auditor-general an appointee of the council with large authority independent of the administration.

One recognizes that the executive of every large governmental establishment requires staff aid to carry out his duties. One senses, too, that criticism of government is equally necessary and that this criticism seldom comes from an agency that is responsible to the administration that it is supposed to criticize. The reviewer recalls the story of the official bureau of municipal research in Cincinnati and of the Republican mayor who chided his city engineer for voting for the Democratic "reformer" Henry T. Hunt. "How do you know that I voted for Hunt?" "What do I have my bureau of municipal research for?," replied the mayor.

Whether the critical faculty can be lodged in the legislative body remains to be proved. To a prejudiced observer, the Boston "Fin-Com" does not present conclusive evidence; the Detroit experience with an auditor-general is too new to tell, and the story of the New York Department of Investigation indicates that it cannot, except under a Mitchel. Most cities give their administration some sort of staff aid and leave objective criticism to citizen organizations.

LENT D. UPSON.

Detroit Bureau of Governmental Research
and Wayne University.

Advisory Bodies; A Study of Their Uses in Relation to Central Government, 1919–1939. EDITED BY R. V. VERNON AND N. MANSERGH. (London: Allen and Unwin. 1940. Pp. 520. 18s.)

Canadian Boards at Work. EDITED BY JOHN WILLIS. (Toronto: Macmillan and Company. 1941. Pp. xxxvii, 190. $2.00.)

Both of these books are concerned with the functions of boards and commissions in parliamentary government; but they differ in several respects. One deals with their use for information and advice in the formulation of administrative policies, the other chiefly with their use as administrative agencies. The first is confined to committees in national government (Great Britain); the second includes boards and commissions of three Canadian provinces as well as of the Dominion of Canada. The English study is the product of ten scholars working under the Oxford University Politics Research Committee, under the chairmanship of Sir Arthur Salter, who opens the book with a short prefatory notice; the Canadian study is also a composite product, undertaken by the Institute of Public Affairs at Dalhousie University, but the contributors are either lawyers (and law teachers) who have had experience with the boards they describe or are administrators.

The purpose of the studies seems to differ, too. The English authors sought to determine the influence and effectiveness of different kinds of advisory committees in the several departments studied, whereas the Canadian writers appear to have had in mind rather a statement of the functions and defense of the employment of administrative boards than an assessment of the utility of these agencies as compared with others. This difference as to purpose is emphasized by the personnel of the contributors. An objective consideration of the uses of administrative boards can hardly be expected from the members and employees of such boards, although such writers may be able to furnish a more vivid and experienced account of the various bodies' problems and methods of operation.

Fifty years ago, such studies of administrative practice in a parliamentary system would have been inconceivable. At the commencment of this century, it was thought that a cabinet, backed by specially trained civil servants and supported by a majority in a popularly elected parliament, was possessed both of adequate information and of representative opinions for almost any purpose. Today, however, such confidence is strangely lacking. Sir Arthur Salter commences his preface to *Advisory Bodies* with the assertion that the "proper use of Advisory Bodies is the right answer of representative democracy to the challenge of the Corporate State." He accepts the view that Parliament as now constituted is insufficiently expert in the specialized economic and social problems of the modern state to control administrative action; accordingly, he offers advisory committees and boards as the new device for introducing "functionalism" into democratic institutions. Few readers of the volume will conclude that advisory bodies, as at present used, constitute an effective reply to the "challenge of the Corporate State." If parliamentary democracy as a constitutional form is challenged by the corporate state, it is not in the realms of ignorance and knowledge (the former being overcome by advisory bodies), but is in the realms of organized power and centralized will. This is not to deny the utility of advisory institutions, but is simply to reject their elevation as a panacea for democratic ills.

For the purposes of the inquiry as to methods and results of the employment of advisory bodies, studies were made of their use by the government as a whole (where they seemed least useful), by the Treasury, by the Boards of Trade and Education, the Ministries of Health, Labor, and Agriculture, and by the Unemployment Assistance Board and the Department of Mines. By concentrating on eight departments, it was possible to follow certain problems through the several stages of rise, discussion, and subsequent treatment. Although it may be unfair to particularize among studies each of which has a special value, the reviewer cannot refrain from declaring that he found the fourth (education) by Mr. John Graves the most interesting and attractive. The advisory bodies prove to be of varied types, from representative commissions and councils to small expert committees, sometimes permanent or statutory, often transient and *ad hoc*. Americans may be surprised at the infrequence with which partisanship enters the picture. In general, it appears that large permanent councils with general advisory functions tend to degenerate in time, that only in the social services have continuous bodies been of value, that precise (but not too restrictive) definition of a problem to be investigated is often as important as the expertness and wisdom of the personnel, and that in issues tinged with political implications a successful report (that is, one leading to action) must be in the direction expected by the government. There is an appendix listing the various bodies appointed in the departments studied.

The other volume, *Canadian Boards at Work*, is a much less pretentious work, and the individual contributions are much shorter and comparatively sketchy. The introduction by Professor J. A. Corry properly connects the use of the administrative boards with the decline of *laissez-faire* traditions, a development not very pronounced in Canada before the First World War. It appears that the Canadian practice of establishing boards for administrative purposes which could have been undertaken by the established departments was copied from American usage. Boards are used for operating industrial enterprises, regulating rates and prices, advice, and adjudication. Of these, it is asserted that the regulatory boards are most important. Part I contains brief studies of the administrative work of one Dominion board (transport) and of two Ontario boards (workmen's compensation and securities). Part II, "Administrative Discretion," consists of two short essays on "unjust discrimination" with special reference to railway rates and on "public convenience and necessity" as interpreted by the Nova Scotia public utility board. Part III is devoted chiefly to procedure before two farmers' debt boards in Saskatchewan. The relation between the two is not made clear, and the outsider might be slow to perceive that they are working under separate Dominion and provincial legislation. The only hint of political forces at work is contained in a few remarks in this section; for, despite the aggressively anti-legalist assertions of the editor, who has interesting forewords to each part, the volume suffers from an uncritical legalist acquiescence in the purposes of the bodies described.

These two works are welcome additions to the growing literature devoted to administrative practices. It is to be hoped that the careful English study will find many readers in governmental as well as academic circles, and that the Canadian essays will reach the wider and less specialized public to which they are directed.

H. McD. Clokie.

University of Manitoba.

The Quest for Law. By William Seagle. (New York: Alfred A. Knopf. 1941. Pp. xv, 439. $5.00.)

The house of Knopf has achieved both a highly attractive format and a probable best-seller of more than ordinary merit in the publication of Mr. Seagle's book. So much is beyond cavil. But it is difficult to go much farther in assessing the quality of the book as a whole, because it is disconcertingly uneven. Mr. Seagle has, for example, two rather short chapters (one at the beginning and one at the end of the work) which deal with the philosophy of law. To be quite frank, the reviewer does not find these altogether coherent. On the other hand, the bulk of the volume consists of a survey of legal institutions which is eminently satisfactory, even when provocative of sharp disagreement.

Mr. Seagle believes that law is "a mode of regulating conduct by sanctions imposed by politically organized society." Of the two ideas involved in this definition, i.e., sanction and authority, sanction is by all odds the more important in his discussion. But the authority of the state is also still apparently involved. And the author wobbles a good deal in his definition of the state. The general impression conveyed, however, is that the state's "legitimacy" is an elaborate hoax.

On the other hand, he discusses as law ("primitive" law) social control antecedent to politically organized society. He also singles out the institution of courts, the "litigious equation," and a professional class of lawyers as highly significant in the development of law. Moreover, he often talks as if law were an abstraction so far as government is concerned, i.e., a normative system capable of furnishing a standard for the latter.

This ambivalence continues to plague him even if we follow him in concluding that the idealistic law—including all the techniques of judicialization just mentioned—is itself a fiction. Thus, when he tells us in effect that the quest for law is hopeless, we can never be sure whether he is saying to that host of earnest spirits who have pursued this quest: "Good people, what you have been looking for doesn't exist;" or, "Good people, you have been looking in the wrong place for law: it has been with you always, and most conspicuously in the shape of despotism and dictatorship." Perhaps the last conclusion most nearly squares with the author's intent, because he says as much in the last chapter.

To turn to the more favorable aspects of the book, the author adopts as his principal divisions three stages in the development of law. Thus, Book II is entitled "Primitive Law," Book III "Archaic Law," and Book IV "The Maturity of Law." Book V, entitled "The Vanishing Points of Jurisprudence," concludes the volume, except for a final chapter (one of the two referred to above) entitled "Justice According to Law." The discussion of primitive law and archaic law proceeds under more or less orthodox chapter headings. The reign of custom, the kinship principle, and the origins of property are appropriately considered under the first. The second instances the appearance of courts with compulsory process, and the institution of the king's peace and the development of judicial procedure follow along with commendable *zusammenhang.* The implementation of a title like "The Maturity of Law" obviously calls for a higher degree of selectivity, and Mr. Seagle rises to the occasion by singling out the rise of legal systems, equity, the law of nature, the rule of law, the criminal law, contract, and codification. Finally, "The Vanishing Points of Jurisprudence" (in itself a most intriguing conception) integrates discussion of the American doctrine of judicial review, administrative law, and international law.

All of the above subjects are supported by sixty-three pages of notes and bibliography, fully adequate in range and content for the purposes of the serious student of jurisprudence. Moreover, while the discussion of some of these subjects is in the nature of highly condensed summary (for example, the account of the substantive development of Roman law), Mr. Seagle usually undertakes a certain amount of independent probing into the problems encountered. In the course of this probing, the reader comes quickly to the conclusion that the author has a gift for trenchant characterization, an incorrigible urge to break icons, and perhaps a few personal prejudices.

It is decidedly helpful to an understanding of medieval law to be told that the register of writs was "the fulcrum of English justice." And the author achieves a true perspective on natural law with a minimum of words when he observes (p. 196) that the "adaptation of the law of modern Europe has been a phase in the history of the law of nature rather than of equity." There are also further generalizations about natural law which would be similarly illuminating were they applied specifically to natural rights. The author does not distinguish between natural law and natural rights, however, with the result that he finds himself undertaking to establish a universal revolutionary character for the former: "In the period of the enlightenment, natural law finally fulfilled its ultimate mission, which is to shake the foundations of an established legal order." A few pages later, this lack of discrimination turns a perfectly true observation into an unexplained paradox when he says (p. 208) that "new social classes . . . have not appealed to the simple precepts of natural law."

Apropos these "new social classes," it must be confessed that Mr. Seagle sometimes reads more Marx into legal history than the evidence seems to warrant. Thus on page 189 it is asserted that the survival of English equity was due to the fact that it represented primarily the interest of the wealthy landowners and merchants of England. This is just a case of generalization outrunning the evidence, but on page 241 the author gives reign to pure fantasy: "The equalitarian criminal law, having become judicialized to a far greater degree than ever before, it is necessary for the dominant class to have some avenue of escape in certain circumstances, and this is provided by the element of intention." The author credits Brooks Adams with "a brilliant exposition of this thesis." In the opinion of the reviewer, "brilliant" is at least a better adjective than "sound" in this connection.

There are times, of course, when Mr. Seagle is fully justified in exposing the underlying economic and class factors in accounting for legal institutions. This is particularly true of contract, and here he is probably at his best. One notes, for example, how neatly the enforceability of purely executory agreements is coupled with the appearance of the modern market agreement to buy future goods at a given price. Here also one finds the connection between contract and the basic postulate of the abstract juristic person ably exposed. And, finally, it should certainly be conceded that the author's comprehension of the shift back from contract to status is both generous and subtle. His treatment of the standardization of contract as proof of the cyclical movement in the status-to-contract process amends Maine in the grand manner of the original. And he displays a nice bit of discrimination in denying the socializing significance of private law limitations on the use of property based on *sic utere tuo ut non alienum laedas*.

One cannot follow Mr. Seagle nearly so readily in his self-assumed character of debunker of over-facile generalizations. As already noted, he is himself not averse to facile generalization when it serves the purpose of his own philosophy of history. But there are times when he proceeds to the job of deflating an adversary for the sheer love of it. Maine, for instance, is taken severely to task for the perpetration of "the greatest of all myths, that early codes represented a reduction to written form of preëxisting customary law." No doubt Maine needs qualification here, out of regard for both the fragmentary aspect of the codes and the fact that the precise qualities they dealt in *were* probably fixed for the first time definitely in the code. It is not true, however, that statutory innovation (Seagle's alternative) is characteristic of the codes.

Again, the author heartily disapproves of the "cultists" of the two great "systems" of law. He does not believe that there is a *Geist des Romisches Recht*, and even less that there is a "spirit" of the Common Law. As a prelude to proof that the characteristics of these contrasted systems are largely conditioned by the phase of development through which each is passing, the anti-cult expressions are unexceptionable. But our author's cosmopolitanism is not satisfied with half-way measures. He does not say, for example, that *stare decisis* has been over-emphasized as peculiarly English. He says, in effect, that precedents mean as much on the Continent as they do in England; or that Roman law was as much judge-made law as English law—propositions, of course, which Mr. Seagle's authorities do not fully support.

Since Dean Pound has written a little book of essays on *The Spirit of the Common Law*, one might expect to find him well within the range of Mr. Seagle's attack. It is nevertheless surprising to note how consistently the Dean finds himself in a direct line of fire. The discriminating reader may, therefore, have some difficulty in convincing himself that ideas only are involved. Or, perhaps, the conflict of ideas is only another "sham battle," in which event positivism has indeed come full circle.

KENNETH C. COLE.

University of Washington.

Economic Consequences of the Second World War. By LEWIS L. LORWIN. (New York: Random House. 1941. Pp. xvii, 510. $3.00.)

The title of this book lays the author open to charges of which he is really not guilty. One is the apparent assumption that economic consequences of the present war can be discussed apart from the political forces in motion and the political decisions taken now and after the war. Though perhaps in a different sense than Spengler anticipated, this war has seen the triumph of the sword over money in all countries (President Roosevelt's comment on the "silly old dollar sign" is symptomatic), and no one can doubt that politics will dominate those few vital post-war years when to the victors will belong the opportunity to re-shape the world. Lorwin, of course, recognizes this, and his discussion is fully as much concerned with the political decisions as with the economic consequences.

The title likewise seems to indicate an intent to predict the world's post-war course. This Lorwin does attempt, though within limits. The major part of the volume is devoted to discussing the consequences of a Nazi victory, on the one hand, and of a "democratic" victory on the other. Obviously, these two assumptions are too broad to permit much in the way of soothsaying. They would have to be made much more precise to furnish the foundation for remotely valid predictions—not merely the fact of democratic victory, but also the length of the war, the temper of the United States at its close, Russian terms for coöperation, the extent of starvation and social and economic breakdown in Europe, and a thousand other variables would have to be assumed.

Tacitly recognizing these limitations, Lorwin does hazard his forecast of the shape of things if a Nazi victory comes. This job is not so difficult, for Nazi domination of the conquered countries of Europe (Germany included) has continued long enough so that a projection of present trends should give us the profile of the wave of the future. Grounding his analysis on present practices and announced intentions, Lorwin presents a credible picture of the economic organization of a Nazi-controlled Europe and a Nazi-dominated world. Attention is given to the probable course of Germany's policy toward her poor relations in the Axis, as well as toward the non-Axis nations. The chapter on "The United States in an Axis World," while presenting the perils of such a situation in a fashion that should have convinced any rational pre-Pearl Harbor isolationist, now seems somewhat out of focus, for it appears to assume an Axis victory in a war in which the United States was not a formal and full-fledged participant, and it certainly does not assume a conquered United States, which is now a necessary condition of a Nazi-Japanese victory.

It is better, however, to pass on to the more pleasant side of Lorwin's picture, our present concern with a Nazi victory being simply to make sure that it does not occur. The author does not attempt the impossible task of guessing what the United Nations would do with a victory, but confines himself rather to an examination of past failures of, and present proposals for, international political and economic organization. He analyzes the case for free trade, Federal Union, a reconstructed League, and an international police force. "Union Now" he considers to be completely lacking in "social-economic concept and goal," its backers concerned only with political problems, and relying mistakenly on the "magic economic power of free trade." He devotes separate chapters to labor and socialist aims, the concept of world democratic planning, and the special position of Great Britain and of the United States in a reorganized democratic world. There is no similar chapter on Russia.

The concluding chapter on "A World New Deal" is in some respects the most interesting in the book. It argues that American policy should be the translation into world terms of the essentials of the New Deal. In the economic sphere, this calls for concerted action by the Great Powers to stimulate and maintain a policy of economic expansion. Lorwin believes that political complications will be solved more easily as economic interests are reconciled and social conditions improved. As for the machinery of this World New Deal, he sketches in five institutions, including an International Colonial Administration, a World Economic Development Organization, and an International Relief and Social Assistance Commission. A World Assembly of Nations would meet annually, with powers of recommendation to these institutions. Gentlemen, the Lorwin Plan!

C. HERMAN PRITCHETT.

University of Chicago.

Grand Strategy. By H. A. SARGEAUNT AND GEOFFREY WEST. (New York: Thomas Y. Crowell Company. 1941. Pp. xi, 246. $2.00.)

This book deals with grand strategy as "not merely a military but a social science" (p. 7), whose subject-matter is the ever-changing and reciprocal relationships between war and the society in which war occurs. It aims to aid in the evolution of the superior over-all technique needed to win the present war and the peace after it. The book, therefore, first traces the development of grand strategy from the days of Napoleon to the present war, to show how Europe's leading Western Powers each in turn achieved a superior technique for continuous change by utilizing previous experience and improving upon it. In each case the authors present the basic reasons for the rise and fall of these nations prior to the present war.

The book next analyzes the grand strategies attempted by Hitler, Stalin, Churchill, and Roosevelt, to find out whether present democratic over-all planning and organization are suited to their end. In spite of the belief of the authors that "in the final reckoning the democratic creed is superior to that of Nazism in its capacity for continuous change and improvement" (p. 25), they find that democratic strategy has not yet fully achieved the superiority required to the end (pp. 159 ff.). They conclude that the war and the peace after it can be won only by maintaining at all times that kind of grand strategy which permits continuous and efficient change rather than security, and which through superiority in leadership, imagination, and the arts of peace eliminates war as a necessary factor for progress in national organization and evolution.

Grand Strategy does not claim to present any new facts in military strategy or the social and political organization growing out of the present or past wars. It claims a new interpretation of the facts by a scientific method concerned only with the actual and attainable. This scientific approach results both in a provocative and a detached treatment of familiar materials. But the conclusion that grand strategy is "the development of human experience dependent at once on the heritage of nation and race, and also upon personality and personal reaction" (p. 209), rests only partly on that approach. Partly it results from a latent belief of the authors that the evolution of society is due to a continuous struggle for survival in which war is the only test of quality of development until grand strategy finds a peaceful method of competition and selection of the strong and great (cf., *e.g.*, pp. 24 ff., 205 ff.).

On the whole, the book presents in stimulating form commonly held ideas and generally accepted facts. Its authors state that the occasional references in the text and the thirty notes added to it bear no relation to the considerable and specialized research and experience of which it is a result. As a guide to present grand strategies and their evaluation as means to an end, *Grand Strategy* should be useful to the student and teacher of courses related to the present war.

GEORGE MANNER.

University of Illinois.

South America and Hemisphere Defense. By J. FRED RIPPY. (Baton Rouge: Louisiana State University Press. 1941. Pp. 101. $1.50.)

Books on South America have been numerous indeed in the past two years—more numerous than reliable. For an authoritative, and at the same time compact, presentation of the importance of South America in an aspect of great current interest, however, J. Fred Rippy's volume here under review is outstanding. The book embraces the four Walter Lynwood Fleming Lectures in Southern History given early in 1941 by Professor Rippy, each chapter representing one lecture. The author presents in lucid and facile style South America's rôle as a part of an integrated Western Hemisphere. In Chapter I, "The Evolution of the American System," he sketches the continent's external political relations since independence and the prospects for an American system based on "harmony, mutual assistance, and solidarity against aggression" and "founded on the belief that peoples of different races and cultures may live together in peace, and on the determination to resist the aggressions of conquerors who have renounced such humane principles and have based their policies on intolerance, hatred, treachery, violence, and terror."

Chapter II sets forth the vast economic resources of South America with amazing clarity for so broad and sweeping a survey—as also the political conditions. The continent's commerce is treated in Chapter III. General trade statistics are shown in such a way as to indicate clearly the trends. Special emphasis is put on the Nazi trade offensive of the 1930's and on the difficulties and insecurity of one-way trade with the United States. This is followed by an analysis of major export commodities. In the final chapter, the author discusses at some length the often wildly exaggerated and visionary ideas of nineteenth-century North Americans as to the actual wealth of the golden land, especially of the tropics, and then surveys, with (the present reviewer thinks) perhaps too much statistical detail, its twentieth-century counterpart, the era of South American bond investment in the 1920's.

Many readers, no doubt, will regret that the policy of the publishers precluded use of footnote citations and of a bibliography. Had these been included, the scholar and the general reader as well might more readily have followed the trails blazed by Professor Rippy in his pioneering. Apparently Professor Rippy has realized this, too, for in another place (articles in the *Journal of Commerce*, April and October, 1940) he has taken pains to give the various pertinent citations. As it stands, however, the greatest single value of the Rippy study is the presentation in brief form of an authoritative work on which the intelligent, but usually uninformed, general public may safely rely.

LEWIS W. BEALER.

Berkeley, California.

The Failures of Peace. By KENT FORSTER. (Washington, D. C.: American Council on Public Affairs. 1941. Pp. 159. $2.50.)

Those who support the thesis that the march of history is impelled principally by the character and determination of a handful of strategically placed individuals will receive aid and comfort from Kent Forster's handling of his subject. In a book heavily ballasted with documentary evidence, the author meticulously traces the source and progress of a score of efforts made between 1914 and 1918 to effect a compromise peace between the Entente and Central Powers. Several promising opportunities for peace presented themselves during the war: in 1916, when the failure at Verdun began to shake the confidence of the German people in the infallibility of the High Command, and when the outlook for the Entente was darkened by the collapse of Rumania; in 1917, when the Dual Monarchy desperately desired peace; when the German Reichstag in a peace resolution declared itself opposed to annexations; when Russia collapsed, and when Briand, Prince Sixtus, Gasparri, Pacelli, von Kuhlmann, von der Lancken, Villalobar, and dozens of others labored energetically to discover bases for the opening of negotiations.

Why did the various efforts fail? According to Forster, the problems raised by the war, difficult of solution as they appeared, would not have been insoluble except for other factors: (1) lack of popular control over foreign affairs (most of the peace feelers were never revealed to the several publics); (2) the fear that a proposal for peace emanating from one combatant might be interpreted by another as a sign of weakness; (3) the fear on the part of both diplomats and militarists of the effect on home morale of a breakdown of peace negotiations (war-weary people might refuse to continue the struggle). These were elements which weighed heavily against the labors of the peace-minded. But they were overshadowed by the personal ambitions of a dozen or more occupants of high office. "Peace was not made without victory, because the decision rested with men who were unwilling to make it any other way." Their ambitions and convictions were dictated by conditioning in the pre-war diplomacy, by their "nationalistic fanaticism," by their desire for territorial and diplomatic spoils, and by their fear that peace with victory provided the only surety that their governments would not fall. The last of these cannot be overemphasized. A government which could not justify to its people long, horrible years of war could not hope to retain their support. And by what means other than by territorial gains could such justification be established?

Perhaps there is a lesson to be learned. While still recognizing the impossibility of reaching a viable agreement with the present leaders of Germany, it might be a wise policy to control and check the *"á outrance"* elements in the present conflict. This is the view taken by the author, who concludes that "there is another Germany, which cherishes the concepts and methods of decency and peace." When the moment for compromise with that Germany arises, "the forces of ultranationalism must not be permitted to triumph again, as they did during the years 1914–1918, to create the Versailles of 1919." This study impresses one with its skillful integration of a superabundance of material drawn from very numerous and diverse sources, as well as with the cogency of the conclusions deduced therefrom.

VERNON O'ROURKE.

Swarthmore College.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

In the revised edition of his *American State Government* (D. C. Heath and Co., pp. xv., 944, $4.00), W. Brooke Graves continues his penetrating studies of our commonwealths in action. The seemingly forbidding length of the book is accounted for in part by the completeness of the lists of references, and by the appendix, the table of cases, and the index—some 160 pages in all. Professor Graves has achieved a commendable balance in the writing of this book. Adequate treatment is given to the formal, structural, and relatively static aspects of state government, but rather more than the usual amount of attention is given to the states in transition. Careful scholarship and detailed description are relieved by an appreciation of social dynamics. Structure and form are used as points of departure for discussions of problems of efficiency and social change. The importance of the state as a separate entity is emphasized without inveighing against the trend toward centralization. The changing position of the states in the Union is portrayed realistically without indulging in gloomy predictions as to the future of the federal system. Despite a deep and sustained interest in state government, the author seems to be entirely free of bias on the subject of state-federal relations. He occasionally shows some concern for the diminishing powers of the states, but one finds no nostalgic longing for the good old days of the "sovereign" states. Indeed, it is clearly pointed out that the states, useful and necessary as they may be, cannot disregard demands for efficiency and improved social services without suffering further losses of power and prestige, and that, if they are to remain vigorous governmental entities, they must learn to coöperate more effectively with each other and with the federal government. No longer can they afford to leave all initiative to Washington. The book presents state government as just one phase—though a very important one—of the government of the nation, and this is as it should be. Because of its completeness, the treatment threatens to become ponderous at times, but the instructor who wishes to emphasize the problems of state government as well as structure and function will find this a very useful text.—ROGER V. SHUMATE.

By analyzing *The Economics of American Defense* (W.W. Norton and Co., pp. 344) in terms of fundamental economic principles, Seymour E. Harris provides an indispensable antidote to the bewilderment produced even among experts by the rapid changes in the magnitude of the defense program and its kaleidoscopic effects. A succinct survey of economic conditions in the years 1933–40 and an excellent statement of the basic economic problems involved in defense lay the background. Recognizing that plant capacity, capital equipment, and productivity form the real backbone of military strength, Part II puts the case of "our industrial potential." How to enlist these factors and carry them to maximum achievement by fiscal policy, and at the same time avoid the dangers of attending financial maladjustments, forms the substance of Part III in the analysis. The use of alternative suppositions and policies not only reveals the true nature of economic processes, but is an extremely useful device in aiding the reader to follow theory into practice. Part IV, on the "International Aspects of Defense," deals mainly with foreign exchange policies and practices in the days of lease-lend, and although less instructive now that the United States is itself at war, remains useful wherever international procurement of raw materials must be met by fiscal accounting. Since post-war problems will depend upon the war effort which has just begun and upon the subsequent course and outcome of the struggle, the discussion of this aspect in Part V deals chiefly with general principles and probable conditions. Of greater importance at this stage is the concluding criticism pointing up the defects of the defense program, for there are lessons here which Congress and the Administration have not yet learned, although now that the country is at war, continued blundering is likely to prove costly and perhaps tragic. The editorial jerkiness arising from the incorporation of previously published magazine articles is sometimes disconcerting, but will not detract from the book's usefulness to the trained thinker to whom it is addressed.—GEORGE H. E. SMITH.

Those interested in the legal aspects of our economic mobilization will find *American Economic Mobilization; A Study in the Mechanics of War* (reprinted from Vol. LV, *Harvard Law Review;* Plimpton Press, pp. 109, $0.40) practically indispensable for the 1939–41 period. The pamphlet is chiefly made up of four extensive chapters, on procurement (concerned mainly with procedure under government contracts), priority control, price control, and commandeering. It covers in meticulous detail the legal authority for the government's action in these fields, citing and discussing the relevant constitutional provisions, statutes, and executive orders. It describes and evaluates the effectiveness of the machinery for administration and enforcement, including the periodic overhauling and modification of this machinery. The pamphlet is necessarily an interim report. For example, it points out the evils of dispersed authority, but was printed before the War Production Board under Donald Nelson was established, which corrected some of these evils. It deals very briefly with allocations, and with coördination of the demands of our allies with our own, both of which problems now loom as of prime importance. But it does point out clearly some important remaining difficulties, such as the interdependence of wage, profit, and price controls, the necessary limitation of civilian demand, and the difficulty of maintaining individual rights —particularly due process—in an all-out war. A final section—"Conclusion"—is limited to two pages, which seems unfortunate, since the material is at hand for a much fuller evaluation of the soundness of the economic and legal theories underlying national mobilization.—HAROLD J. TOBIN.

Meno Lovenstein's *American Opinion of Soviet Russia* (American Council on Public Affairs, pp. 210, cloth $3.25, paper $2.75) is a summary and analysis of opinions on Russia expressed by American labor journals, business and trade periodicals, learned journals, general magazines, books, newspapers, and government documents. The time covered is divided into four periods: 1917–21, 1921–29, 1929–33, and 1933–40. In all of these periods, most of the expressions of opinion were hostile to Russia and without any adequate appreciation of actual developments. Only the *Nation* and the *New Republic* seemed to deal with developments objectively over the whole time. Hostility to Russia abated somewhat in the later periods in some circles, but not in others. Particularly depressing is the revelation of the failure of the economic and other learned journals to appreciate the significance of Russia's experience and deal with it as it deserved. Dr. Lovenstein has read much and has documented his book with many footnotes, but most of his newspaper references are from the *Literary Digest.* His conclusion that American opinion of Soviet Russia is largely determined by events of the moment in the United States is open to question. When we consider that the opinion of the mass of the people would be based on what they read in the channels of communication treated, we may conclude that this study is chiefly significant for the proof which it furnishes of the difficulty which a people has in forming intelligent opinions on foreign affairs.—CHARLES W. SMITH, JR.

Fifty Years of Public Life (Duke University Press, pp. x, 422, $3.50), by Daniel C. Roper, is a somewhat stolid type of autobiography, which nevertheless manages to weave in a few personal glimpses and sidelights as it carries along its matter-of-fact story. It is based upon the political events and official activities with which the author was connected from his start as a member of the South Carolina legislature in Tillman's administration, through various functions at Washington, including the secretaryship of commerce, and finally as minister to Canada under Franklin D. Roosevelt, not to mention national party conventions and election campaigns. Mr. Roper caught little of the flair of a McAdoo or a Wilson or a Roosevelt, though he worked under all three. He writes seemingly as if he were a mixture of a bureaucrat, who cannot say very much, and a shrewd politician, who will not say too much. His work omits facts about the inside wheels of government, parties, and politics. It at times tantalizes the reader by verging upon important revelations, as in the account of the bargaining between the McAdoo-Garner element and the Roosevelt convention forces in 1932, with Roper as a go-between. But it soon regains the road of the known, the obvious, or the platitudinous. It gives praise and moral support to the political ideas of Woodrow Wilson and Franklin D. Roosevelt. It holds up a sort of human mirror, not completely clear, in which is reflected the growth of American government in the last fifty years. Mr. Roper did have many experiences, and many students will have to read his book, which is comparable in form and spirit to Oscar Underwood's valedictory, *Drifting Sands of Party Politics*.—H. C. NIXON.

The study entitled *Problems of Constitutional Revision in Illinois* (Illinois Legislative Council, Research Department Publication No. 43, pp. ii, 33) is an inquiry into the adequacy and present prudence of the Illinois constitution, to which only seven amendments have been added since 1870. As a method of determining the adequacy and continuing suitability of the constitution, reliance is placed upon the extent to which the document restrains legislative action and upon the manner in which these restraints operate—a test which the author agrees is not absolute and is not the only one which might have been applied. To this end, several provisions of the constitution are examined for their characteristics. For example, it is shown that the method of submission of amendments, the majority vote required for their adoption by the people, and the type of ballot used in elections have thwarted several legislative proposals for revising the constitution. Moreover, it is pointed out that those sections of the constitution which deal with legislative apportionment, the judiciary, local government, banking, and revenues prevent reforms long overdue in these fields. Changes are suggested which would give these sections that flexibility required in order that legislative enactments under them may provide for the needs of a changing society. Comparative data on the situation in other states and six statistical tables add to the value of the report, which should be of special interest to students of constitutional reform.—WILLIAM H. COMBS.

Bennett M. Rich's *The Presidents and Civil Disorder* (Brookings Institution, pp. x, 235, $2.00) shows that civil disturbances that have required presidential intervention have taken place in the United States from the time of the Whisky Rebellion to the strike in the North American Aviation plant. In his study, Mr. Rich gives both a running account of the events concerned with presidential intervention and an interpretation of the rôle played by the presidents in those instances where the armed forces of the United States were used to secure order. At the end of each chapter, the author's appraisal of the actions of each individual president is of special worth. One chapter is devoted to the sources of presidential authority for the use of troops. At the present time, when the very success of the war effort depends to a great extent upon unity on the home front, the volume holds added significance. Americans can and do unite at times of great crises. Under normal conditions, however, differences of opinion are bound to occur. "Civil disorders are seldom caused by trifles." It is heartening to know that Mr. Rich concludes that the presidents have been temperate in the use of troops and that the most frequent practice is to use the armed forces only as a last resort. This volume is a noteworthy example of the productive research work now being done in our graduate schools.—ROBERT S. RANKIN.

The Tennessee Valley Authority has coöperated with several state agencies in the T.V.A. region in making studies of local government. The most recent of these is Lloyd B. Raisty's *Municipal Government and Administration in Georgia* (Institute for the Study of Georgia Problems, University of Georgia, pp. vi, 293, no price). The study contains not only an analysis of charters, statutes, reports, and court decisions, but also the results of a field study which included visits to 123 municipalities. Most of the study is factual and descriptive, although in admirable summaries at the ends of chapters the author is critical of certain practices and makes suggestions for improvements. Georgia municipalities operate under special charters; there is a large amount of special legislation; the form of government is unstable, although charter changes must be approved by the voters in cities of less than 50,000. There is no uniform budget, accounting, or reporting law. These and other matters are determined for each city by special charters. Education, health, and welfare play a subordinate rôle in municipal affairs, and many Georgia cities do not participate at all in the educational function. Planning and zoning have been given very little consideration by the cities, and consequently are treated but briefly in this report. The study is well written, and the reading material is supplemented by sixty-one tables. There is an adequate index. The author achieves his announced purpose of providing a source of information for students, citizens, and officials, and the book should prove a valuable addition to studies on municipal government.—W. V. HOLLOWAY.

The publication of a second printing of *The Pulse of Democracy* (Simon and Schuster, pp. viii, 328, $2.50), by George Gallup and S. R. Rae, is an indication of interest in the general subject of public opinion polls. The writers, who are associated with the American Institute of Public Opinion, present a valuable analysis of the methods and results of the now famous "Gallup polls" sponsored by that organization, and demonstrate the unsoundness of many of the criticisms of the techniques used. The study stops short of the presidential election of 1940, and it is to be hoped that there will be later editions which will include the polls of that interesting campaign. In discussing the broader theoretical implications of opinion polls and their importance in a democracy, the authors write with less assurance and less satisfactory results. Their analysis leans too heavily upon Bryce and draws too little upon the new psychology. Faith in the accuracy of the Gallup polls as a reflection of public opinion does not necessarily follow from faith in democracy, as the authors seem to imply in their concluding chapters. The polls may "fill a real need in the existing structure of democracy" (p. v), but Mr. Gallup and Mr. Rae do not present a convincing case for their claim.—LOUISE OVERACKER.

In *America's Struggle for Free Schools* (American Council on Public Affairs, pp. vii, 276, cloth $3.50, paper $3.00), Dr. Sidney L. Jackson investigates "social tension and education in New England and New York, 1827–42." The preface indicates the self-imposed limitations of the monograph. The geographical frame of reference, excluding both the South and West, is rather inexplicable, but the chronological period is reasonably coincident with the Jacksonian era. Pursuing the social meaning of the "Common School Revival," Dr. Jackson examines the ideas of the "intellectual leaders," the professional educators, the rural publicists, and the urban-labor groups comprising the cultural-economic strata of the times. His analysis of the "intellectual leaders" who resisted "the rising, challenging Common Man" is particularly penetrating; on the other hand, his observations on the "Labor and City Protest Movement" seem superficial, even ambiguous. Drawing his materials mainly from "the contemporary public literature," the author presents an extensive bibliography of thirty-four pages, with sixty-two pages of references. The book is not intended as a definitive piece of work; rather, it suggests further studies in the American compound of democracy and education.—MARIAN D. IRISH.

In *Income as an Index of the Fiscal Capacity of Michigan Counties* (University of Michigan Press, pp. viii, 78), Marvin A. Bacon classifies the state's eighty-three counties as mineral, forest, farm, farm-urban, and urban, and analyzes their principal sources of income. He then applies seven different indexes to each county in an effort to find the best measure of local taxpaying ability (or the relative need for state aid). He considers assessed valuation the most practical index for a school district, and per capita supernumerary income (income in excess of that needed for living essentials) the best index for county relief grants. He ranks four other indexes: (2) per capita income, excluding income from government, (3) per capita income, (4) per capita assessed valuation, and (5) assessed valuation. He recognizes that complete equalization of local tax burdens and services may perpetuate inefficient and uneconomic units. Similar studies in other states would aid in finding scientific formulae for distributing state and federal aid.—WILLIAM L. BRADSHAW.

Like Bessie L. Pierce's studies of Chicago, Charles Hirschfeld's "Baltimore, 1870–1900: Studies in Social History" (*Johns Hopkins University Studies in Historical and Political Science,* Series LIX, No. 2 (1941), pp. xiv, 176, $1.50) is based on the thesis that American urban history should have a broad scope, emphasizing such fields as public education, industry, and charities; unlike the former, no separate chapters are devoted to city government itself. Nevertheless, the author recognizes the intimate relationship existing between public education and politics, quoting a report which pointed out in 1892 that "the board of school commissioners is therefore a product of the ward politicians." Some attention is also given to the pressure activities of organized labor and capital. Though the student of government will look in vain for any systematic treatment of Baltimore politics in Mr. Hirschfeld's monograph, a considerable amount of valuable background material may be found therein.—HAROLD ZINK.

A Library Classification for Public Administration Materials (Public Administration Service and the American Library Association, pp. xv, 501), by Sophia Hall Glidden, is based in part on a revision of the 1928 *System of Classification for Political Science Collections* by William Anderson and Sophia Glidden. Usefulness to special libraries in public administration has been stressed; hence administrative aspects of government, especially those developed greatly since 1928, and not adequately reflected in the Dewey or Library of Congress classifications, are strongly represented.—JOHN M. GAUS.

FOREIGN GOVERNMENT AND POLITICS

M. M. Knappen's *Constitutional and Legal History of England* (Harcourt, Brace and Company, pp. x, 607) is a concise textbook designed especially to be used in college courses in English constitutional history for pre-legal students. It is well planned and well executed for this purpose, and is built upon an unusually comprehensive outline. The material is first divided into six broad periods—the Anglo-Saxon, the Middle Ages, and so on. Each period is introduced with a general account of political, economic, and cultural history. Then follows for each period a systematic treatment of the machinery of government and the legal system. The latter is subdivided into the organization and jurisdiction of courts, procedure and the legal profession, and substantive law. The student who works his way conscientiously through this volume will get a broad understanding of English history, with the emphasis upon the governmental and legal aspects. The material is necessarily much compressed. In spite of this, Professor Knappen manages to tell the story in an interesting style with a good deal of embellishment in the way of personal anecdotes and quotations from contemporary literature. College students are going to say that it is "good reading," but some of them will think that the author underestimates their powers of comprehension by sometimes explaining the obvious. The multiplication of cross-references is an unnecessary and unfortunate feature of the book. The preface, which in this case should be read first, is an unusually fine example of that branch of literature.—JOSEPH R. STARR.

A. H. McClintock's *The Establishment of Constitutional Government in Newfoundland, 1783–1832* (Longmans, Green and Co., pp. xvi, 246, $6.00) fills an important gap in the history of Newfoundland and casts a vivid light on a dark corner of the old colonial system. The Newfoundland fishery was long regarded as a nursery of seamen requiring annual voyages to produce sailors for the navy, and the trade was long dominated by the West Country merchants. Settlement was deliberately retarded in the interest both of the trade and the Empire. But "the eighteenth century wars were the salvation of Newfoundland colonization" (p. 12); annual voyages were interfered with, and the long arm of the law failed to catch up with settlement. By 1783, settlement was too well established to be uprooted. The half-century following marks the gradual transition of the island from the status of a seasonal fishery to a colony. Colonization, however, had its own evils: the navy still continued to govern or misgovern the colony; a colonial merchant class came to exploit settlers in place of the West Country merchant; and climatic conditions, poverty of resources, uncertainties of catch and price dogged the settlers. Toward the close of the period, local agitation and the growth of liberalism at home combined to give the island its first representative institutions. The volume, which is one of the Royal Empire Society's series, shows careful scholarship and balanced judgment. The style is clear, correct, and sensitive. A critical bibliography adds greatly to the value of the book. It is a pity that the author does not seem to have had access to Professor Innis's great study on the cod fishery. In price and appearance, the book is something of a war casualty.—R. A. MACKAY.

The Soviet Experiment (Richard Smith, pp. 120, $1.25), by Harry Best, is a popular and brief appraisal of the Soviet régime. Within the space of 120 pages, it covers a wide field of general discussion which includes an account of resources, economic antecedents of the Soviet Revolution, the fall of the Tsarist régime and the coming of the Soviet power, its accomplishments in the field of agriculture and industry, education, religion, democracy, and foreign relations. Naturally, all of these topics are dealt with in a superficial manner, yet the little book is to be recommended to persons who desire to obtain, in a painless manner, a general idea of the Soviet state. *The New Russian Empire* (Tuttle, Morehouse and Taylor Co., pp. 114, $3.50), by the European scholar Andrew Efron, is an erudite study of the legal and political foundation of the Soviet state since Stalin's assumption of power. The author does not confine his study to the Soviet Union, but reconsiders "many traditional notions and concepts" of modern political theory. Dr. Efron has a profound knowledge of political philosophy, which is expressed in his discussion not only of the Soviet state but of other forms of contemporary political theories, especially Nazism. Throughout the work the comparative method is used. In the four chapters which the book contains, such topics as dual law, contribution to the theory of law, collapse of Soviet democracy, and the New Empire are discussed in an impeccably scholarly manner. The work is not one for the layman, but it should command the attention of those interested in contemporary political theory. A general bibliography and index are included.—B. W. MAXWELL.

Much has been written on nineteenth- and twentieth-century Spain, but the great bulk has been of a light and frothy nature, with writings based directly on documentary evidence few and far between. Arnold Verduin's *Manual of Spanish Constitutions; Translations and Introductions* (Ypsilanti, Mich., University Lithoprinters) is one of these exceptions. This 99-page book includes, in handy form, exact translations of the Spanish constitutions of 1808, 1812, 1837, 1845, 1856, 1869, 1876, and 1931, along with the Royal Charter of 1834 and the Republican Project of 1873, arranged in chronological order. Each document is preceded by a brief factual introduction giving the setting amid which it was drawn up, along with citations to published sources of the originals. All in all, the *Manual* is one of the most convenient and valuable source-books of its kind to appear in recent years.—LEWIS W. BEALER.

INTERNATIONAL LAW AND RELATIONS

The World's Destiny and the United States; A Conference of Experts in International Relations (R. H. Donnelly and Sons Co., pp. xx, 309, $1.00), is a report written by Henri Bonnet on a conference held in April, 1941, by the World Citizens Association, which has built a program for the post-war order upon the premise that the interdependence of the modern world calls for world citizenship as both a sentiment and a political reality. However ambitious the general program, the merit of this important book lies largely in the fact that it presents, not a group of revelationists, but of distinguished scholars and practitioners in international affairs, discussing soberly, frankly, and with no little divergence of opinion the many formidable problems which radical reform in international relations raises. While recalling in some respects the old League to Enforce Peace, the group is separated from it by a host of disillusionments, and in fact searches the history of the League of Nations for errors and warnings. It thus arrives at a plan inverting the theory of the League, which was weak in actual powers but top-heavy in their execution. The new world state is envisaged as having final sovereignty, the function of making world law and of supervising matters of common concern, and a monopoly upon armed power to enforce arbitration and peace. But because the post-war problems will require "a more elaborate and a more decentralized structure" than the old League, the new world state will combine universalism with regionalism by delegating the execution of the more local functions to nations and regional groups which preserve for world society not only cultural differentiations but local initiative and expertness. So, too, the emergence of the world state is conceived of as an evolution through the common organs of the democracies at war and, still later, through regional associations which become completely integrated only when the heart of man is ready for world citizenship. A prerequisite of the entire development is the full coöperation of the United States, weaned away from isolationism by the tutelage of its own self-interest. It would be irrelevant as well as trite merely to point out the obstacles confronting the fulfilment of this design, which represents not a prediction but a valuation. The only legitimate criticism is that since our disasters may have come from hypertrophied nationalism rather than from the nation-state itself, the prevention of their recurrence may not require a reform that is as drastic, difficult, and experimental as is the world state.—ALBERT K. WEINBERG.

The title of R. W. G. Mackay's *Peace Aims and the New Order* (Dodd, Mead and Co., pp. 306, $2.50) promises both too much and too little. The work, as its sub-title indicates, outlines the case for European federation, and proposes the text of a constitution for a United States of Europe, but does not deal with peace aims or a new world order in general. As a discussion of the more specific problem, the work seems rather well informed, thorough, and restrained. It fails, however, to deal adequately with the crucial problem of relations between any European federation and the world union which is admitted to be necessary (p. 127), and fails to see that without solution of that problem the proposal for a European union, even—or especially—if it could be realized, would be not only valueless in the larger view of the future of international relations, but positively dangerous. This shortcoming seems to be intimated (pp. 15, 21) in the foreword by Norman Angell. The author also seems to exaggerate the virtue of constitutions and organizational arrangements. He says (p. 88): "If an international authority is created with a Legislature, an Executive, and a Judiciary, and such matters as defense and external affairs are transferred to it by the states of Europe (*sic*), that authority will be able to exercise power." Of two things, one: either the states are willing to act together to repress aggression or they are not. If they are not, they will not make the grant suggested or live up to it if they do; if they are so ready, they can utilize to that end a loose system of coöperation. *In such fundamental issues as security*, organization and procedure are of small moment. Once more it seems that too much attention is given to mechanical rather than spiritual aspects of the problem, both in reviewing the League experience and in prescribing for the future. Nevertheless, the book is stimulating, if not convincing.—PITMAN B. POTTER.

The latest volume in the series, *World Economic Survey* (League of Nations Economic Intelligence Service, pp. 275, $2.50) covers almost two years—from the autumn of 1939 to the summer of 1941. It concerns itself generally with "the shift from welfare economy to war economy, and especially the organization of production and distribution of goods by the state." This shift and organizational development is summarily traced and stated, in so far as data have been available, for selected principal modern nations, illustrating similarities and differences between those in which the state has achieved complete control, as in Germany and conquered countries, with those in which, as in the United States, the transition is just getting under way. An opening chapter reviews the characteristics of the whole change: depression, revival through armament expenditures, rising prices, intensive mobilization of productive resources, shifts in employment, development of labor shortages, and other items. Remaining chapters then examine the war-time control of production in terms of organization, mobilization, and regulation of labor and agriculture; control of consumption through restrictions and various types of rationing; governmental spending, taxing, and borrowing, and the data on money, prices and interest, including techniques of price control; international monetary relations, especially those of the British Empire and the United States; raw materials, foodstuffs, industrial activity, and transport. Numerous tables and charts set forth factual data. A significant general conclusion apparent from reading this material is that the Axis Powers, while away out ahead in completing the transition, not only are far weaker in most major productive resources, but already in 1939 were showing signs of industrial fatigue, accompanied by an increasing decline in man-hour rates of production. The volume is a highly useful survey of the period and a handy reference manual for selected groups of data.—HARVEY PINNEY.

For some years the University of Michigan has been noted for distinctive special summer work in aspects of Oriental and Renaissance culture and in linguistics. In 1941, the Rackham Graduate School offered a formal course of study on "Public Policy in a World at War," the twenty lectures of which were published in *The Annals of the American Academy of Political and Social Science,* Vol. 218, November, 1941 (pp. 193, $2.00). Professor Jesse S. Reeves opened the series with a penetrating discussion of the interrelation of the domestic and foreign policies of the United States, emphasizing that "no country will knowingly adopt a foreign policy contrary to its national advantage" (p. 2). Ambassador Hu Shih analyzes "ideologies," identifying twenty-one characteristics of totalitarianism and drawing contrasts between it and modern democracies which are "content with piecemeal processes of social, economic, and political reform" (p. 31). The diplomatic *débâcle* before Munich is explained by Count Carlo Sforza in terms of the inability of Britain and France, 1931–1938, to appreciate the seriousness of the European situation and to take a firm stand to restrain Mussolini and Hitler. The prospect for a union of democracies is portrayed as dependent upon several contingencies: Axis victory, with no union possible; stalemate, after a long and bitter war during which belligerent and non-belligerent democracies alike would find it desirable to work together in close collaboration; and (written before the appearance of the United Nations on the scene) British victory, with complete financial exhaustion of Britain and allied democracies and consequent eagerness for both political and economic protection. Considerable space is properly devoted to economic problems, to the relationship of the United States to the war (summer of 1941), the requirements of a war economy, and dilemmas of democracy.—WILSON LEON GODSHALL.

The University of Chicago Press has published the 1941 Lectures on the Harris Foundation under the title of *Inter-American Solidarity* (pp. xii, 228, $1.50), edited by Walter H. C. Laves. The lectures cover several different phases of a very broad subject. In the first of the series, under the title "What Have the Americas in Common?," the Cuban historian Herminio Portell Vilá emphasizes democracy as a basis for inter-American coöperation. He discusses the rapid progress being made toward the elimination of language barriers and deals briefly with some of the other racial and social problems which the Americas have in common. Other aspects of this same general question are dealt with by Dr. Daniel Samper Ortega in an enlightening and frank treatment of the problem of cultural relations from the point of view of a South American friend of the United States. There are two lectures on economic questions: "Inter-American Trade and Financial Problems," by Eduardo Villaseñor, who outlines the history of Latin America's economic relationships with the outside world and advocates the development of Latin-American resources and industry by North American capital; and "Raw Materials and Inter-American Solidarity," by Arthur R. Upgren, which deals somewhat more specifically with one very important aspect of hemisphere trade. Mr. Upgren believes that there should be an effort to improve intra-hemisphere markets, but that any attempt to achieve hemispheric self-sufficiency is undesirable. He advocates a two-fold solution of the "problem of raw materials and inter-American solidarity": (1) "the maintenance of the fullest possible output by the industrialized areas of the hemisphere," and (2) "the maintenance of as free as possible a trade with other specialized raw material areas of the world that are not yet victims of the rampant forces of aggression." Major George Fielding Eliot discusses the problem of hemisphere defense, which, he says, depends upon the command of the sea by the United States and Great Britain; and Professor Scott's lecture deals with "Canada and Hemispheric Solidarity." "Latin America," he says, "has always seemed remote to Canadians," but the Dominion's contacts with that region are increasing and there are many ways in which its coöperation in the Pan-American movement could be helpful. Professor Rippy concludes the series with a brief lecture on "Pan-Americanism and the World Order."—DANA G. MUNRO.

One of the thorniest obstacles to Uncle Sam's good neighbor policy arose when foreign-owned properties were taken over by the Mexican government. The resulting complicated problem, whose roots lie deep in the political, economic, and social history of the land south of the Rio Grande, is well handled by Wendell C. Gordon in his *The Expropriation of Foreign-Owned Property in Mexico* (American Council on Public Affairs, pp. viii, 201, $2.50). As the author points out, two main issues are involved: (1) the clash between private property rights and national welfare on the one hand, and (2) the clash between sovereign power and international law on the other. Fortunately, there was no actual question as to the right of the Mexican government to expropriate the landed estates and oil properties within its boundaries so long as it provided just compensation and did not discriminate in favor of its own nationals. The real issue, as far as the United States was concerned, centered about the demand of the State Department for compensation. Time was when marines and destroyers might have been used by an exasperated Washington to make our demands effective. But today, with infinite patience, the State Department, to its everlasting credit, works out a solution in a peaceful manner. In his well-documented and interesting study, the author passes in review the domestic, social, legal, and economic aspects of foreign-owned property in Mexico and then turns to a consideration of expropriation under international law. His account is an impartial one. He demonstates that Mexico, if her resources were to be utilized for the national welfare, had a real case. But the capitalists, who had invested their millions in Mexico, also had a case. This book presents a fine background for an understanding of both points of view.—FRANCIS O. WILCOX.

Whether Clarence H. Haring's *Argentina and the United States* (World Peace Foundation, pp. 77, cloth $0.50; paper $0.25) is a primer on Argentine-American relations or on Argentina itself is never made quite clear. Since the two subjects are best understood when studied together, Mr. Haring's pamphlet is a useful introduction to this frequently misunderstood segment of our foreign relations. Two chapters on Argentine history and two on the nation's economy provide a necessary background for the final chapter on Argentina's position in the present world crisis. In the wake of the Rio de Janeiro conference, this discussion has a heightened interest. If Mr. Haring does not make crystal clear the wellsprings of Argentine foreign policy, his evidence shows an economic and ideological situation so complicated as to refute any "clear and simple" explanations by anybody else. As for the future, the author hardly expects this proud and sensitive nation to shift its foreign policy overnight; but he does believe that Argentina is slowly moving in a pro-Ally direction.—WILLIAM T. R. FOX.

The political and military aspects of war tend rather easily to dominate our thinking. Thus the appearance of *The Rice Economy of Monsoon Asia* (Stanford University Press, pp. 358, $3.50), by V. D. Wickizer and M. K. Bennett, is doubly welcome. It is a basic study in the food of half the world, and thus a significant contribution to the economics of the present war and the world that shall emerge from it. This is the third major publication of the Stanford Food Research Institute, so ably directed by Dr. Joseph S. Davis. It embodies studies in rice economy initiated in 1927. The present book is largely the work of Mr. Wickizer. In content, it is thoroughly comprehensive, covering such subjects as environment of world rice economy, features of lowland-rice culture, marketing and milling the crop, the export and import markets, rice in the Asiatic diet, price factors, government intervention and price-control, interpretations of consumption trends since 1920, potentialities for expansion in rice economy, and finally trends for the future. Excellent maps, charts, and critical notes on the sources complete the study. There are some minor typographical errors, such as "Amori" for Aomori (p. 18). Among their conclusions, the authors note that in recent decades "population growth [in Monsoon Asia] has been more rapid than the expansion of the area devoted to rice and the increase in yearly production. . . ." Thus there has been a quantitative and qualitative deterioration in the diets of huge numbers of people. ". . . if expansion of the aggregate rice output can be effected only with difficulty, the question of the future adequacy of food supply may be raised for rice in Monsoon Asia more appropriately than it was for wheat by Sir William Crookes in 1898."—PAUL H. CLYDE.

Once in a while a "timely" study proves to be out of date by the time it is published. Such is partly the fate of Catherine Porter's *Philippine Emergency* (American Council, Institute of Pacific Relations, pp. 78, $0.15). Published late in 1941, it in some ways reflects the same complacency which proved so detrimental to our national interests. An illustration of this is found in a passage taken from a brief discussion of the possibilities of Japanese attack. "In fact, there are several reasons why such a direct threat has been considered unlikely. . . ." With the exception of this attitude, running throughout the pamphlet, the study is an excellent summary of the Philippine problem. The difficulties of defending the Philippines are stated clearly, and possibilities that have now materialized in the Bataan peninsula are suggested. A very fair explanation of what the United States has done for the Philippines in the way of sanitation and education follows. There is a hint of the selfish story behind the Independence Act of 1934, and a plea is made for a policy based on loftier motives in the future. "The United States gave the Filipinos something they wanted—a promise of independence—largely because a small group of Americans wanted to be rid of the islands: it should not go back on that promise because another small group of Americans now desires to retain them [because of the mineral wealth now known] and is trying to convince the American people that the Filipinos have had a change of heart." A discussion of the economic dislocation of Philippine economic life because of the Independence Act is valuable because of its restraint, even though painting a black picture for the future. The large alien population of the islands, together with the diversified native population, suggests possible difficulties. In so far as the present situation has not destroyed the assumptions of the author, this pamphlet is probably as compact, accurate, and valuable a discussion of the Philippines as the layman can find.—ANDREW E. NUQUIST.

From the Battle of Britain in the autumn of 1940 to the capture of Kiev in the fall of 1941, many significant events occurred—events which readily lose their meaning if they are not viewed in the total framework of World War II. The fascinating story of these events is recorded in Edgar McInnis' *The War: Second Year* (Oxford University Press, pp. x, 318, $2.00), a book which weaves together in admirable fashion the many complex threads which form the pattern of the world's second year at war. Various phases of the conflict are considered: the military, the diplomatic, the economic. All fronts are visited: Britain, Germany, America, the occupied countries, the Far East, the Mediterranean, the Atlantic, Africa, Greece, the Near East, Russia, the Balkans. Numerous important incidents are analyzed: the Pact of Berlin, the Lend-Lease Act, the Hess episode, the Atlantic Charter. While the narrative proceeds in chronological fashion, the author has sifted and arranged his facts so that they make sense even to those who have not followed the war closely. Of no little aid are the documentary appendix, the chronology of events, and the eight maps, without which most arm-chair strategists of the present war would be completely lost. The book, which is a sequel to Professor McInnis' *The War: First Year*, makes an excellent companion volume to Shepardson and Scroggs, *The United States in World Affairs in 1940.*—FRANCIS O. WILCOX.

POLITICAL THEORY AND MISCELLANEOUS

In *Reason and Revolution; Hegel and the Rise of Social Theory* (Oxford University Press, pp. xii, 431, $3.75), Herbert Marcuse devotes more than half of his book to the presentation of Hegel's thought. He introduces his subject with a chapter on the historical and philosophical setting of the times. He then analyzes Hegel's early philosophical writings, and in turn, *The Phenomenology of Mind*, *Science of Logic*, *Philosophy of Right*, and *Philosophy of History*, showing us not only his ideas but tracing their development. The second part of the book deals with Kierkegaard, Feurbach, and Marx; with Positivism and the rise of sociology—Saint Simon, Conte, Stahl, and von Stein; and finally with the influence of Hegel in England, Fascist Italy, and Nazi Germany. Marx, according to Mr. Marcuse, is the true heir of Hegel, for he alone, of the above writers, "penetrates to the origins of the individual in the process of social labor and shows how the latter process is the basis of man's liberation" (p. 262). Mr. Marcuse has given us a most useful and timely summary of Hegel's thought, although the writing is rather heavy and frequently lacks direction and a sense of pattern. His analysis of Stahl and von Stein should be of more than passing interest to English readers. He has done well to show us the limitations of sociology. So, too, has he done well to show how Gentile perverted Hegel, and how Alfred Rosenberg and Carl Schmitt, the "philosophers of National Socialism," have opposed Hegelian ideas. At the same time, many will have difficulty in accepting the basic Hegelian doctrine, which seems to be fundamental to Mr. Marcuse's own thought: that "contradiction is the root of all movement and life" (p. 147). This is never proved, nor is it self-evident. Nor will most readers find much meaning in the dialectic, as Mr. Marcuse is able to do, on the ground that it is so general that you can make it serve any content that you wish to pour in. Trotskyites and Stalinites can draw with ease diametrically opposed conclusions from the same principle. Mr. Marcuse accepts without question Marx's analysis of labor and the labor theory of value, and the whole scaffolding of Marxian thought that rises from it. He shows little awareness of the criticisms that have been made of this analysis. As with most writers who have a deep sympathy with Hegel and Marx, the author frequently stands for absolutes, and is not averse to sweeping statements. —BENJAMIN E. LIPPINCOTT.

The main thesis of *The Theology of Politics* (Oxford University Press, pp. xvi, 164, $2.50), by Nathaniel Micklem, is, first, that "all political problems are at bottom theological," inasmuch as "every political system rests upon some doctrine of man and of the value and meaning of human life"; and secondly, that in the present crisis the democracies are at a disadvantage in that they fail to realize, or have forgotten, the fundamentally theological significance of the democratic philosophy as an expression of Christian teaching. The purpose of the book is accordingly to furnish an effective answer to Marxist materialism and Nazi racialism in the form of a doctrine of society which, "because it makes its appeal to the reason and conscience of humane and civilized men," "may be apprehended as the will of the living God revealed in the teaching of Jesus Christ." The basis of this doctrine as opposed to Marxian communism and National Socialism is the concept of man as a rational (under which the author includes also a moral) being. His discussion of the Marxian concept of the individual is more penetrating than one usually finds, as is also that of National Socialist morality. In refutation of the relative concept of right as taught by National Socialism, the author cites the ultimate convictions of the "rightness of right" and of the "goodness of goodness," which he believes are held by "the generality of educated men." He finds these to be as "objective and certain as are any facts in the physical world," and to be "matters . . . of knowledge, or we have no knowledge." Upon this foundation he builds a doctrine of the state, of human rights, and of the post-war order, which, grounded in the Christian faith, he believes to be valid, and also to constitute what he holds essential in the present emergency—"an articulated philosophy of the state and of society more rational, more attractive, and more human than that of our enemies," and thus offering "the impulse of religious conviction at least as passionately held as the pseudo-religions of Germany and Russia." With some parts of the presentation, such as that dealing with the ever-difficult problems of the "alleged rights of man" and of sovereignty, the reviewer finds it impossible entirely to agree. It is believed also that certain influences, such as that of the Stoics in their emphasis on human dignity and on the law of right reason, have been underestimated. There is much need, however, for a reëmphasis on the fundamentally Christian significance of the democratic philosophy; and the book, although perhaps bordering at times on the dogmatic, makes an important contribution at this time, when if civilization is to survive, morality and religion in the true sense must take their proper places in the life and thought of man.—Ellen Deborah Ellis.

Silas Bent McKinley's *Democracy and Military Power* (Vanguard Press, pp. 350, $3.00) is an enlarged edition of a book first published in 1934. The two chapters added contribute very little to the value of the book, consisting merely of a résumé of military developments since 1934, with a warning that democracy is threatened by the program of the Axis. But the original chapters contain a statement and an attempted verification of a vitally important thesis, one which deserves the emphasis given by the re-publication of the book. This thesis is that the common man can secure a significant place in political affairs only when he has a significant place in military affairs, that "the predominance of infantry is essential to establish and preserve democracy," although "it does not necessarily carry with it that result." After stating this point of view in the first chapter, the author devotes the remainder of the book to an attempt to prove it valid. He traces the rise and fall of democracy in Greece and Rome, and deals with its development and present position in the Western World, directly relating its course throughout the centuries to changes in military techniques. The warning is sounded that the airplane and the tank are undemocratic implements of war, and that even the infantry will not serve effectively as a bulwark of popular government when it must be so highly trained as to be professionalized. To the reviewer, the argument is convincing and extremely important. While the broad historical sketch provided by Mr. McKinley is helpful, one need only look at the fate of democracy in Spain to realize that if those who have a majority of the votes wish to preserve democracy, they would better see to it that they possess a preponderance of military power. It is easily possible that wherever democracy exists, the majority might vote for measures absolutely unacceptable to the minority, in which case the decision would be made by force of arms. Then democracy could survive only if voting power is a fairly accurate reflection of military power. Parties, in other words, are potential armies which are expected to do their fighting in a non-violent way around the ballot box; but whenever the party defeated at the polls thinks it could win on the field of battle, democracy is endangered. And the prospect of military victory by the minority party is increased when weapons become intricate and costly and fighting becomes a skilled profession.—Vernon Van Dyke.

Studies in Political Science and Sociology (University of Pennsylvania Press, pp. 194, $2.00) is a collection of eleven papers presented on the occasion of the University's bicentennial celebration. Dr. Hu Shih suggests and hopes that pragmatism may at last produce a political philosophy along the lines of the instrumentalist theory of logic. Drs. Newton Edwards, Mark A. May, and William G. Carr discuss, respectively, the evolution of American democratic ideals in education, the reasons for our failure to achieve them, and a program for their attainment. Professor William E. Rappard, tracing the American origins of the Swiss constitution of 1848, shows how reluctantly, yet successfully, the Swiss adopted our bicameralism and federalism. Dr. Arthur C. Cole provides a brief account of minorities in American history. Dr. Louis Wirth contributes an excellent analysis of recent trends and forces affecting the status and prospects of our minority groups. Dr. Carl Kelsey examines the possibilities of toleration for minorities in a democracy, and Dr. Alvin S. Johnson surveys the consequences of mass immigration. Dr. Philip E. Mosely thinks that repatriation, earlier employed to some advantage with regard to Greek, Turkish, and Bulgarian minorities and recently resorted to in Poland, is likely to be extended as a method of dealing with the minority problem, particularly in totalitarian states. The singularly acute problems of today's European refugees in both of the Americas are sympathetically presented by Dr. William Haber, who also indicates the types of services being rendered by the principal refugee organizations in the United States. Each of these short essays represents a distinct contribution to its particular subject.—CARLTON C. RODEE.

Although *Ethics and Social Policy* (Prentice-Hall, pp. 522, $3.00 college, $4.00 trade), by Wayne A. R. Leys, is concerned primarily with the problems of ethics, it is highly deserving of attention from political scientists. A wide search would be necessary, for instance, to find a better statement of the rôle of the courts in the formation of public policy than is contained in Chapter III. Other chapters are a valuable antidote to the confusion that plagues thought and action concerning social policy, especially the confusion of normative and descriptive opinions. Perhaps the most original contribution of the book is an attempt to clarify and correct the views of Machiavelli, Marx, Hegel, Nietzsche, Dewey, and T. V. Smith on the relation of government to class conflict. The last five chapters discuss the extent of participation in policy-making. After contrasting religious authoritarianism with totalitarianism and traditional democracy, the author concludes by criticizing both social experimentalism and the *Führer-prinzip*. Dr. Leys has drawn heavily on social science materials as well as philosophy, but has managed to carry on his discussions in a non-technical style. For this reason, his book should be useful as collateral reading in political science courses and as a basic or supplementary text in survey courses.—GLENN G. WILTSEY.

To many Americans, India is an enigma, a paradox. Krishnalal Shridharani's *My India, My America* (Duell, Sloan and Pearce, pp. xii, 647, $3.75) gives the background material for a clear understanding of the alleged Indian paradox. The volume is an interesting mixture of lively narrative, personal experiences in India and America, objective reporting, and interpretative analysis of present-day Indian conditions. No work of recent years, written from the Indian viewpoint, excels this one in its comprehensive picture of Hindustan, its people, their history, politics, industries, national and international policies. Dr. Shridharani, a follower of the Gandhi movement, offers also vivid word-images of the outstanding Indian leaders. Louis Bromfield, who contributes an introduction, says that for him the author has presented India "through the eyes of an Indian but in the idiom of an American, and so the people in the book, their backgrounds, their customs, their traditions, become human and real." The book has the virtue of sincerity and intellectual substance.—SUDHINDRA BOSE.

James M. Read's *Atrocity Propaganda, 1914–1919* (Yale University Press, published for the University of Louisville, pp. xiv, 319, $3.50) is chiefly concerned with differentiation between atrocity and atrocity story. The task is accomplished by search of newspapers, official documents, memoirs and unpublished papers of important officials, monographs on propaganda, and many secondary works, books and articles. The concluding impression as to the actual facts of atrocity falls safely between the extremes of credulous belief and cynical rejection. Close scrutiny of the facts and opinions involved in important situations is always a serviceable task; and that is true of this study. However, emphasis upon unique facts of specific instances of atrocity has deflected the author from full collective analysis. Also, the case analyses are not entirely convincing when they must needs depend upon secondary works, many of which were produced during the years when propaganda about war propaganda was in flower.—HERMAN C. BEYLE.

The Southern Negro and the Public Library (University of Chicago Press, pp. xvi, 218, $2.50), by Eliza Atkins Gleason, is important to librarians and to students of minorities as being the only thorough study of its subject. Mrs. Gleason carefully examines the legal basis for public library service for Negroes, especially in terms of the implications arising from the Gaines case, and includes also an analysis of both white and colored library facilities in the South, with emphasis, naturally, on the striking differential in service for the two races. She makes extensive use of charts and tables, some of which are inadequately captioned; and her excellent study rests mainly on personal observation, reports, correspondence with librarians, and questionnaires.—GARLAND DOWNUM.

The purpose of E. C. Buehler, editor, in presenting *Compulsory Military Service* (Noble and Noble, pp. viii, 422) is to supply Vol. VIII in his Annual Debaters' Help Book series and make available for debaters a practical help. The first one-fourth of the volume is devoted to analytical outlines, briefs, and other aids for debaters. The articles and speeches, though rather well selected in general, have now grown considerably out of date, since they were tied to the idea of compulsory training for national defense. Numerous ones, however, present more permanent arguments on the question of compulsory military service as a policy in a democratic state, and these are more to the interest of the student of government. There is no index, but a selected bibliography is included.—H. C. COOK.

RECENT PUBLICATIONS OF POLITICAL INTEREST
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AMERICAN GOVERNMENT AND PUBLIC LAW

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VOL. XXXVI JUNE, 1942 NO. 3

THE MONROE DOCTRINE AND WORLD WAR II

FRANCIS O. WILCOX
University of Louisville

Only a decade or two ago, the Monroe Doctrine was in disfavor. The vitriolic pens of its critics denounced it as an "indisputable evidence of our overweening national conceit." They condemned it as an "obsolete shibboleth," "hoary with age"—a doctrine which the twentieth century would surely relegate to the dusty archives of diplomatic history. As late as 1937, no less a person than the chairman of the Senate Committee on Foreign Relations remarked in the course of an interview that the Monroe Doctrine was dead.[1]

Time and circumstance, however, often bring remarkable changes. Since the beginning of World War II, the red blood corpuscles of Pan-American unity have instilled new life and vitality into the Doctrine. Curiously enough, after 120 years, the very threats which confronted President Monroe in 1823 have risen again to becloud the security of the Western Hemisphere. Historians may have argued (before the fall of France) that the Holy Alliance, with its determination "to put an end to the system of representative government," constituted a greater danger to the New World than the Rome-Berlin-Tokyo Axis. It is clear, however, that the fascist concepts of the master race and of world domination are far more menacing to democracy than the avowed aims of the Holy Alliance ever were. The tremendous striking power which the Axis has so amply demonstrated in a world shrivelled by technology, coupled with the demoralizing effects of up-to-date fifth column techniques, makes the case even clearer. If the Monroe

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[1] For numerous opinions, see the address of G. H. Blakeslee, *Proceedings, Amer. Soc. of Int. Law*, 1914, pp. 217 ff. See also H. Bingham, *The Monroe Doctrine; An Obsolete Shibboleth*, p. 111; G. Nerval, *Autopsy of the Monroe Doctrine*, p. 324; D. Perkins, *Hands Off*, p. 360; J. W. Garner, *American Foreign Policies*, p. 136.

Doctrine had died by 1937, the situation a year or two later called for its immediate and complete reincarnation.

Before turning to World War II, it may be well to recall the words of President Monroe. He struck out boldly and defiantly against the Russian encroachments along our Northwest coast, and against the rumors that the Holy Alliance might attempt to restore the new republics of Latin America to the Spanish monarch. After warning that the American continents were "henceforth not to be considered as subjects for future colonization by any European power," he called attention to the differences between the political systems of Europe and America. "We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers," he said, "to declare that we should consider any attempt on their part to extend their political system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the governments who have declared their independence and maintained it . . . we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power in any other light than as the manifestation of an unfriendly disposition toward the United States."

With the various interpretations and applications of the Monroe Doctrine we cannot here be concerned. Suffice it to say that such things as the Big Stick philosophy of Theodore Roosevelt, Taft's dollar diplomacy, and the activities of American marines in the Caribbean "aggravated the uneasy suspicion of Latin America until it broke forth in a veritable epidemic of Yankeephobia which swept the entire region from Mexico City to Santiago and Buenos Aires."[2] Fortunately, however, 1933 marked a definite turning point in this era of misunderstanding. That year recorded simultaneously the pronouncement of the good neighbor policy and the accession of Hitler to power—the one to serve as a necessary antidote for the other. Certainly the high-light of the Montevideo Conference (1933) was Secretary Hull's willingness to support the decision of the delegates that "no state has the right to intervene in the internal or external affairs of another."[3] These were not empty words. Speedy action in renouncing our interventionist activities in Cuba, Nicaragua, Haiti, and Panama were convincing demonstrations that the New Deal meant what it said. Further good will blossomed at Buenos Aires in 1936, when any intervention, whether direct or indirect, was declared "inadmissible." It was likewise agreed that whenever the peace of the Americas is threatened, the twenty-one governments should consult together with the thought of coöperating to preserve the peace of the Continent.[4]

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[2] J. F. Rippy, in introduction to Manuel Ugarte, *The Destiny of a Continent*, p. xi.

[3] *The International Conferences of American States, First Supplement, 1933–1940*, Carnegie Endowment, p. 122.

Since that time, the Conference of Lima (1938) and the meetings of the American Foreign Ministers at Panama (1939), Habana (1940), and Rio de Janeiro (1942) have continued to add new ingredients to the formula. At Habana, for example, the Foreign Ministers declared that "any attempt on the part of a non-American State against the integrity or inviolability of the territory, the sovereignty, or the political independence of an American State shall be considered as an act of aggression against the States which sign this declaration."[5] The result of these deliberations has been to make the peace and security of the Americas, not the unilateral concern of Washington, but the collective concern of all the American states. Thus has been given the *coup de grâce* to the *old* Monroe Doctrine. And out of the conference debates has emerged a *new* Monroe Doctrine, continentalized or Pan-Americanized to be sure, but clearly discernible in its broader outlines.

I. HEMISPHERIC SOLIDARITY AFTER PEARL HARBOR

This move to convert the Monroe Doctrine into a common hemispheric defense policy paid rich dividends after the attack on Pearl Harbor. Within the week, messages poured into Washington from every Latin American capital assuring us that our neighbors to the south were determined to live up to their obligations in respect to continental defense. The messages of Nicaragua, Panama, Costa Rica, Cuba, the Dominican Republic, El Salvador, Guatemala, Haiti, and Honduras announced that war had already been declared upon the Axis—in most cases by a unanimous vote of the legislature.[6] Mexico recalled that "any aggression against any nation of this hemisphere will be considered by our country as an aggression against our own sovereignty." Uruguay, Colombia, and Brazil expressed their absolute solidarity with the United States. Peru offered "every assistance in measures which the United States deems necessary . . . " Venezuela, Chile, Bolivia, and Paraguay declared that they would discharge their international obligations. And even Argentina, the most persistent fly in the Pan American ointment, assured us that she would not consider the United States a belligerent and would not subject us to the restrictions usually imposed upon warring powers by a neutral.

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[4] *Ibid.*, pp. 189–191.

[5] Texts in *The Department of State Bulletin* (cited hereafter as *Bulletin*), Aug. 24, 1940.

[6] See *Bulletin*, Dec. 13, 1941, for these messages.

But actions speak much louder in diplomatic circles than mere words. At Rio de Janeiro, on January 28, 1942, the twenty-one republics unanimously agreed to far-reaching resolutions calling for the severance of diplomatic, commercial, and financial relations with Axis powers.[7] The cutting of diplomatic ties amounted to a substantial victory for the United States; it meant, in effect, that Axis agents would no longer be able to carry on subversive activities under the protective cloak of diplomatic immunity. As the conference doors closed, only Argentina and Chile maintained relations with the Axis. And even in these countries—whose governments had accepted *in principle* the policy of discontinuing relations with Germany, Italy, and Japan—it was generally agreed that the machinations of Axis agents would be curtailed considerably because of the growing pressure of public opinion and the uncertainty of their status in the future.[8]

Of equal importance were the resolutions adopted in the economic field. Not only did the American republics recommend the severance of all commercial and financial intercourse between the Axis powers and the Western Hemisphere; they also agreed to coöperate in the production of strategic raw materials and agricultural products and in the mobilization of transportation facilities important to continental defense. Of no little significance was the agreement to coördinate inter-American shipping—one of the weakest links in the Allied armor—and to put into immediate use those Axis merchant vessels hitherto immobilized in the ports of the New World. That, however, is only one side of a mutually beneficial bargain.[9] In return for the very valuable aid Latin America will render our war effort, the United States stands ready, according to other resolutions, to stimulate production and to stabilize the economy of the countries south of the Rio Grande. Envisaged no doubt is an outpouring of loans, technical experts, and essential materials into the undeveloped regions of Latin America. Steps will be taken also to safeguard the currency and protect the financial structure of the American republics, probably with the aid of a stabilization fund.

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[7] For texts, see *Bulletin*, Feb. 7, 1942, pp. 117–142.

[8] *New York Times*, Jan. 29, 1942.

[9] See D. H. Popper, "Thoughts After Rio," *New Republic*, Feb. 9, 1942, pp. 201–202.

Two other resolutions deserve particular mention. One provides for the creation of a special committee—the Emergency Advisory Committee for Political Defense—charged with the task of coördinating measures for the suppression of espionage, sabotage, and subversive propaganda. The other calls for "the immediate meeting in Washington" of an inter-American defense commission, composed of military and naval experts, to study the defense needs of the continent. What could be more indicative of the progress that has been made to put hemispheric defense on a joint basis?

To be sure, the Rio conference was not a complete victory for the United States. Yet, as Sumner Welles pointed out, "for the first time in the history of our hemisphere joint action of the highest political character has been taken by all of the American nations acting together without dissent and without reservation."[10] In one sense, this represents a state of development considerably beyond that reached by the League of Nations before its untimely demise. Certainly the action taken by the American republics against the aggressors amounts to the application of sanctions far more drastic than those applied against Italy in 1936. Latin states, for the most part, have shied away from any international organization in the Americas comparable to the League of Nations. Yet when the crisis reached this hemisphere they were ready to act effectively and without hesitation.

This speedy, whole-hearted coöperation looms up in pleasing contrast to the Pan-American solidarity of the first World War. In April, 1917, when the United States finally declared war against Germany, a murmur of approval swept across Latin America. Even so, President Wilson's determined efforts to unite the New World against tyranny and autocracy met with only partial success. Seven states remained neutral throughout: Argentina, Chile, Colombia, Mexico, Paraguay, El Salvador, and Venezuela. Thirteen openly demonstrated their solidarity either by severing diplomatic relations with Germany or by declaring war. Bolivia, Ecuador, the Dominican Republic, Peru, and Uruguay broke off diplomatic relations; Brazil, Cuba, Costa Rica, Guatemala, Haiti, Honduras, Nicaragua, and Panama actually entered the war on the side of the Allies.[11]

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[10] *Bulletin*, Jan. 24, 1942, p. 77.

II. THE NON-TRANSFER OF TERRITORY

As the Nazi panzer divisions swept across Europe in 1940, Americans turned instinctively to the protective shelter of the Monroe Doctrine. Four European powers possessed territory within striking distance of our shores. The Dutch owned the islands of Aruba, Curaçao, and Bonaire off the Venezuelan coast, and Dutch Guiana; the French claimed Miquelon, St. Pierre, Guadeloupe, Martinique, and French Guiana; Greenland belonged to Denmark; and finally Bermuda, the Bahamas, Jamaica, British Honduras, British Guiana, and numerous islands in the Lesser Antilles owed allegiance to the British crown. With such outposts as Aruba and Jamaica only about 600 miles from the Panama Canal, it was essential that territory in the New World remain in friendly hands.

Our attention was early drawn to Aruba and Curaçao. On May 10, apparently with the blessing of the State Department, British and French forces were put ashore on these islands to help prevent possible sabotage in the oil refineries there. While the arrangement was a temporary one, involving no exchange of sovereignty, German sources complained that our use of the Doctrine was unfair; that Allied troops were allowed to do what German troops could never have done.[12] In some respects, the Germans were right. Certainly the Monroe Doctrine was not designed, like a burglar alarm, to operate automatically regardless of who is doing the breaking and entering. From time to time, we have conveniently neglected to invoke it in the face of rather flagrant violations. In the 1830's, territorial annexations by Great Britain in the New World raised not a murmur of protest from Washington. So, too, in other cases—such as the retrocession of St. Bartholomew by Sweden to France in 1877—we behaved "precisely as if the Monroe

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[11] See W. H. Kelchner, *Latin American Relations with the League of Nations*, pp. 16–41. See also P. A. Martin, *Latin America and the War* (1925).

[12] *New York Times*, June 20, 1940.

Doctrine had never been invented."[13] And while it is barely possible that Washington set a dangerous precedent in 1940 by permitting the Allies to "occupy" American soil,[14] the incident demonstrated once more the complete flexibility of a doctrine designed to be applied when, in our opinion, the peace and safety of the Americas is threatened.

The possibility of the transfer of territory to non-American powers had been anticipated shortly after the war began, at the first meeting of the American Foreign Ministers held at Panama City. A resolution was adopted providing that in case "any geographic region of America" under the jurisdiction of a non-American state "should be obliged to change its sovereignty and there should result therefrom a danger to the security of the American continent," consultation among the republics should follow.[15] On June 17, 1940, the very day France collapsed, the State Department informed the governments of Holland, France, Great Britain, Germany, and Italy that "in accordance with its traditional policy . . . , the United States would not recognize any transfer, and would not acquiesce in any attempt to transfer, any geographic region of the Western Hemisphere from one non-American power to another non-American power."[16] These principles, together with an approval of the Panama measures, were incorporated in resolutions adopted by the House and the Senate.[17] As if to lend unanimity to the round of applause, both the Democratic and Republican party platforms promised to enforce and defend the Monroe Doctrine.[18]

The non-transfer principle, it should be added, cannot be found in President Monroe's original statement. It is rather a logical extension of the Doctrine, based on our desire to prevent the establishment in the Americas of powers which might threaten our peace and safety. During the nineteenth century, our government announced on several occasions that we would not permit Cuba to fall into the hands of any European power other than Spain; Secretary Clayton wrote, in 1849, that the cession of Cuba would be "the instant signal for war."[19] In 1869, President Grant made it crystal clear that European possessions in the Americas were no longer subject to transfer from one European power to another.[20] And today, since practically all American territory has been settled or claimed for many years, the danger from transfer looms much larger than the dangers involved in colonization.

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[13] See J. B. Moore, *Digest of Int. Law*, VI, pp. 435, 442; Nerval, *op. cit.*, pp. 155–181.

[14] On February 11, 1942, the State Department announced that American troops had been sent to the island and an AP dispatch of April 4, 1942, stated that all Dutch forces there had been placed under Rear Admiral Oldendorf of the U. S. Navy.

[15] *Bulletin*, Oct. 7, 1939, p. 334.

[16] *Bulletin*, June 22, 1940, p. 682.

[17] Text in Jones and Myers, *Documents on American Foreign Relations*, II, p. 90. The Senate adopted its resolution on June 17, by a vote of 76–20; the House adopted its resolution on June 18, 380–8.

[18] The Democrats declared: "We favor and shall rigorously enforce and defend the Monroe Doctrine." The Republicans called for the building of our national defense "to the point at which we shall be able not only to defend the United States . . . but also efficiently to uphold in war the Monroe Doctrine."

Under the cirsumstances—with tradition giving its full consent—the United States might well have played a lone-wolf rôle in applying the non-transfer principle. However, as Sumner Welles pointed out on October 23, 1940: "Recent years have made it clear that the Panama Canal cannot be rendered secure, nor our own territory be regarded as safe from invasion by air, unless the territory of our neighbors is equally secure. And that cannot be achieved without the loyal friendship of other American powers."[21] Mr. Welles was simply saying that Latin American defense problems are, to a large extent, identical with our own, and that a spirit of coöperation is the only satisfactory way of combatting the fascist technique of divide and conquer. Even the most impatient believers in democracy will admit that the exasperating delays that sometimes flow from discussion and compromise are far less significant than the advantages that come when twenty-one nations move together toward a common goal.

This spirit dominated the second meeting of the American Foreign Ministers at Habana. Expressing the fear that European territorial possessions in America "may be converted into strategic centers of aggression" against the New World, the conference, without mentioning the Monroe Doctrine, took another giant stride toward continentalizing it. Under the old Doctrine, in case some dangerous transfer of territory were attempted, the region probably would have been administered, and perhaps even annexed, by one of the American republics. Not so with the new Monroe Doctrine. The resolution adopted provides that when islands or regions in the Americas, possessed by non-American states, are "in danger of becoming the subject of barter of territory or change of sovereignty, the American nations . . . may set up a régime of provisional administration . . . ."[22] This provisional administration was to be undertaken by an emergency committee, made up of representatives of each of the republics, to function until the convention adopted on the Provisional Administration of European Colonies and Possessions in the Americas should receive the fourteen ratifications necessary to put it into effect. Once the Convention was in force, however, the functions and authority of the committee were to be taken over by a permanent Inter-American Commission for Territorial Administration. Any such territory, the resolution stipulates, must be administered with two things in mind: (1) the imperative needs of continental defense, and (2) the desires of the inhabitants of the regions involved. Once the emergency passes, the territory may be constituted as an autonomous state, or restored to its previous status.

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[19] J. R. Clark. *Memorandum on the Monroe Doctrine*, p. 129.

[20] See J. D. Richardson's *Messages and Papers of the Presidents*, IX, p. 3980; Moore's *Digest*, VI, p. 428.

[21] *Bulletin*, Oct. 26, 1940, p. 341.

It is not necessary to discuss the many interesting details of the convention at this point. The language used, however, is significant: "any transfer, or attempted transfer, of the sovereignty, jurisdiction, possession, or any interest in or control over any such region to another non-American State, would be regarded by the American Republics as against American sentiments and principles and the rights of American States to maintain their security and political independence." No detective is needed to trace the origin of that clause. Just as significant are certain other provisions: that "the acquisition of territories by force cannot be permitted"; that "force cannot constitute the basis of rights"; that the American Republics "as an international community" possess "international juridical capacity to act. . . ." The ratification of this Convention not only marks the acceptance of the Monroe Doctrine as a rule of international law in the New World; it also marks another step in the march of the American nations toward confederation.

III. THE MONROE DOCTRINE EXPANDS

One extremely significant development of recent years has been the tendency to push ever outward the limits within which the Monroe Doctrine is to operate. Until 1938, there was a very real doubt in the American mind whether we should risk war in order to protect *all* the Americas from Baffin Bay to the Straits of Magellan; indeed, a *Fortune* poll taken in 1937 revealed that more than sixty per cent of our people were not in favor of "defending by force any Latin-American country from foreign attack."[23] Only twenty-eight per cent answered the question in the affirmative. In actual practice, it is true, the Doctrine has been applied, almost exclusively since 1823, to the Caribbean area. But in effect those who urged that we confine our attention to the area north of the Brazilian hump or the Amazon River were doing grave injury to the words of Monroe.[24] He did not say "the Caribbean region," or "the area north of the equator." His references were to "America," "the American continents," and "any portion of this hemisphere."

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[22] Texts in *ibid.*, Aug 24, 1940, pp. 146–147.

An early "extension" came in the direction of Canada. Although the Doctrine had never before been applied *vis-à-vis* that Dominion, President Roosevelt left no doubt as to our intentions when, on August 18, 1938, in a speech delivered at Kingston, Ontario, he declared that the United States would not "stand idly by if the domination of Canadian soil is threatened by any other empire." Two years later, the government, strongly backed by public opinion, announced the creation of a Canadian-American Permanent Joint Board on Defense to consider "the defense of the north half of the Western Hemisphere."[25] Shortly after Pearl Harbor, this coöperation reached its high-water mark. On December 23, 1941, the Joint War Production Committee of Canada and the United States unanimously agreed upon "a combined all-out war production effort and the removal of any barriers standing in the way of such an effort."[26]

Such close collaboration is significant for two reasons. In the first place, it is an admission of the obvious fact that Canada's defense problems are our defense problems; that the protection of Alaska, the Aleutian Islands, Greenland, Iceland, Newfoundland, and other strategic outposts is of mutual concern. In the second place, it solidifies the Western Hemisphere into one defense unit, with the United States acting as the connecting link between Canada and the Pan-American system. To the present time, in deference to her ties with the British Commonwealth, Canada has remained outside the Pan-American fold. Her statesmen, consequently, have been sorely missed at Lima, Panama, Habana, and Rio de Janeiro. It would be helpful if the present war should convert Canada to full inter-American coöperation, so that the Pan-American circle might be complete.

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[23] These polls are summarized in Dexter Perkins, "The Monroe Doctrine Today," *Yale Review*, Summer, 1941, p. 694. See also his article in *For. Affairs*, Jan., 1942.

[24] Cf. Allan Nevins, "New Meaning for Monroe's Doctrine," *New York Times Magazine*, July 21, 1940.

[25] Shepardson and Scroggs, *The United States in World Affairs in 1940*, Chap. 8.

[26] *Bulletin*, Dec. 27, 1941, p. 578.

As the approaching storm grew more ominous, America became steadily more apprehensive. According to a Gallup poll taken in February, 1941, some eighty-six per cent of our people agreed that the United States should fight in case "Brazil, Argentina, Chile, or any other Central or South American country is actually attacked by a European power." More than that, we early found it desirable to expand the American defense orbit well beyond the borders of the hemisphere. This was, in effect, the purpose of the Declaration of Panama (1939), which, "as a measure of continental self-protection," created a 300-mile security zone about the Americas. Within this zone, declared the American Republics, belligerent nations should refrain from committing hostile acts.[27] The Declaration went even further and provided for consultation in order to decide upon the measures necessary to secure respect for the zone, and for patrol of the coastal waters in question. The belligerents, of course, rejected the proposal as a change in the rules of war which would infringe upon their legitimate rights as warring nations.[28] And all our protests at the repeated violations which ensued went for naught.

From a strictly legal point of view, the American Republics did not have a leg to stand on.[29] The rules of international law cannot be changed by unilateral action, and certainly neither the laws of war nor the Monroe Doctrine had ever been stretched to protect the thousands of square miles of ocean in question. Morally, however, the case is not quite so clear. Inasmuch as the belligerent states had staked off vast portions of the high seas as "war zones" within which neutral rights were severely restricted, would it not seem justifiable for neutral countries to set aside certain "peace zones" so as better to protect their peace-time activities from the devastating effects of war?[30] In any case, the Declaration of Panama, based as it was upon "the fundamental law of self-protection," may well be considered a corollary to the Monroe Doctrine—a first line of defense flung out to protect the Western Hemisphere.[31]

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[27] Text in *Bulletin*, Oct. 7, 1939, pp. 331–332.

[28] Replies of Great Britain, Germany, and France in *Bulletin*, Feb. 24, 1940, pp. 200–204.

[29] On "The Monroe Doctrine and International Law: 1933–1941," see J. J. Lenoir in *Jour. of Politics*, Feb., 1942.

But just what is the "Western Hemisphere?" Since the Monroe Doctrine has been so indissolubly linked to that term, it would seem important to define the phrase before attempting to decide when and where it should be invoked. According to S. W. Boggs, geographer of the State Department, "the geographical or historical Western Hemisphere" has been defined "neither by Nature nor by common agreement."[32] Assuredly the North and South American continents and their adjacent islands should be included. But what of Greenland? And Iceland? On April 9, 1941—one year after the occupation of Denmark—agreement was reached with the Danish minister in Washington granting to the United States the authority to assist in maintaining Greenland's independence, and to construct and operate on the island whatever defense facilities might seem necessary.[33] Apparently the increased tempo of Nazi activity on and about the island made it desirable to bring Greenland within the defense system of the Western Hemisphere. A week later, Secretary Hull asserted that "Greenland is within the area embraced by the Monroe Doctrine."[34]

While most geographers agree that Greenland is a part of the Western Hemisphere,[35] there is by no means unanimity in respect to Iceland. Vilhjalmur Stefansson, to be sure, squeezes it in by locating the boundary line separating the two hemispheres in the middle of the widest channel half-way between Europe and North America on the one hand and Africa and South America on the other.[36] It is true, too, that a small tip of Greenland extends farther east than the eastern portion of Iceland. But Iceland lies closer to Northern Europe by air than to North America, and its main ties are with Europe. It is apparent that the idea of the Western Hemisphere is at bottom a *political* concept.[37]

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[30] See C. G. Fenwick, "The Inter-American Neutrality Committee," *Amer. Jour. of Int. Law*, 1941, pp. 19–27.

[31] In this sense, see Stephen Duggan, "The Western Hemisphere as a Haven of Peace," *For. Affairs*, July, 1940, p. 626.

[32] See his letter in *Cong. Record*, Vol. 86, p. 11963 (June 8, 1940).

[33] For text, see *Bulletin*, Apr. 12, 1941, p. 445.

[34] *Ibid.*, p. 447.

[35] See the statement of Geographer Boggs cited above; see also Col. Lawrence Martin, "The Geography of the Monroe Doctrine and the Limits of the Western Hemisphere," *Geog. Rev.*, July, 1940.

[36] "What Is the Western Hemisphere?," *For. Affairs*, Jan., 1941, pp. 343–356.

On the other hand, to protect Greenland while allowing Iceland to fall into the Nazi grip would be penny wise and pound foolish from a defense point of view, since it would be difficult to hold the one without the other. Accordingly, on July 7, 1941, our government occupied Iceland. No attempt was made to justify the move by invoking the Monroe Doctrine;[38] so far as Washington was concerned, it was purely a matter of national defense, and it was no doubt wise to avoid a wrangle over the meaning of the Western Hemisphere when so vital an issue as aid to Britain was at stake.

During the weeks that followed, German torpedoes began to take their toll in the North Atlantic. Several ships, including the U.S. destroyer *Greer,* en route to Iceland, were sunk. On September 11, President Roosevelt warned the Axis powers that, from that date on, "if German or Italian vessels of war enter the waters the protection of which is necessary for American defense, they do so at their own peril."[39] Again the Monroe Doctrine was not mentioned. But once again, in pushing ever outward our defense lines, we were admitting the inadequacy of a hemispheric defense policy in a world where a distance of three thousand miles signifies so little.

All of this means that the Monroe Doctrine of the future must be conditioned by two simple facts learned in the school of experience: (1) we in the Western Hemisphere cannot live alone; (2) we shall find it increasingly difficult to fight alone. Those who argued in 1940 that we would be able in any eventuality to defend our interests by falling back upon our own shores can see now how short-sighted such a policy is. What would be the position of the United States today had Britain fallen in 1940, if the Russians had not stopped the Nazi Blitzkrieg, or if the forces of Chiang Kai-shek had not fought so tenaciously in China these past five years? As M. Briand once said: "There is not one peace for America, one peace for Europe, and another for Asia, but one peace for the whole world." With the defense orbit of the Americas ever expanding, perhaps the time has come when, in the words of Woodrow Wilson, the Monroe Doctrine should be made "the doctrine of the world."

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[37] See P. E. Mosely, "Iceland and Greenland; An American Problem," *ibid.,* July, 1940, p. 746.

[38] *Bulletin,* July 12, 1941, pp. 15–18.

[39] *Bulletin,* Sept. 13, 1941, p. 197.

IV. COMBATTING THE FIFTH COLUMN

The Monroe Doctrine was obviously directed against armed aggression, colonization, and the transfer of territory. But ideas, too, are weapons. What about fifth column techniques, economic penetration, and the like? President Monroe may never have heard of the fifth column, but he warned the autocracies that they must not attempt to "extend their system to any portion of this hemisphere." And his phrase "oppressing them, or controlling in any other way their destiny" certainly covered many subtler forms of aggression which the fascists have made fashionable in recent years.

Recognizing that the increased tempo of Nazi activities in Latin America might become more effective than bombers or sixteen-inch guns, the American Republics took appropriate action at Lima in 1938. There they applauded the spiritual unity of the Americas—a unity based upon republican institutions, a will for peace, a respect for international law and state sovereignty, and the ideas of individual liberty, humanity, and tolerance. These ideals they vowed to maintain and defend "against all foreign intervention or activity that may threaten them."[40] And they promised to consult together in case the peace or security of any American Republic is threatened "by acts of any nature that may impair them." Moreover, in the Declaration of American Principles they united to denounce intervention, aggression, and conquest, and to reaffirm their faith in such concepts as law and order, the equality of states, the sanctity of treaty obligations, peaceful change, and international coöperation. In so doing, they erected a second strong ideological fence against fascism. The fascist scoffs at the efficacy of international law. He sneers at the validity of treaty obligations. He utilizes force as the very life blood of his régime. He grinds under his heel the rights of small states. He repudiates the thought of international coöperation by the simple formula of dealing with and disposing of individual states one at a time. All this is anathema to the Americas. For even if certain Latin American capitals shelter dictatorial régimes, fascist techniques in the international sphere run counter to the ideals and traditions of the New World.

With the coming of war, more specific steps against fifth column activities were deemed necessary. At Panama, the Foreign Ministers resolved to recommend to their governments that the necessary measures be taken "to eradicate from the Americas the spread of doctrines that tend to place in jeopardy the common Inter-American democratic ideal."[41] In the meantime, German shooting clubs and gymnastic groups, German diplomats and "business men," German schools and newspapers, continued to present a decided danger to American unity. An alarming demonstration of how deep these subversive elements might burrow came with the *exposé*, in the spring of 1940, of a German plot to take over the government of Uruguay. The Habana conference, emphasizing the danger involved, resolved to prevent the political activities of foreign consular and diplomatic agents which might "endanger the peace and the democratic tradition of America." It was likewise agreed that each of the Republics should take steps to suppress such activities by foreign associations or political parties, and to combat any movement directed from abroad tending to foment internal disorder or threaten the free exercise of democratic government. Special efforts were to be made to curb civil strife and to regulate closely the movement of foreigners and war materials in the Americas. And finally the Foreign Ministers agreed to a full exchange of information among the states concerning subversive activities.[42]

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[40] *Dept. of State, Press Release,* Dec. 24, 1938.

But the road to hemispheric defense could not be paved with good intentions alone; direct coöperation in the financial, economic, and military realms had to be forthcoming before some governments could afford to take the risk involved in a stand against the Axis.[43] There are many evidences of such coöperation. The Inter-American Neutrality Committee, the Inter-American Financial and Advisory Committee, the Inter-American Development Commission, and other international machinery has been created. Plans for an Inter-American Bank have been adopted. The exchange of students and professors has been encouraged. Extensive loans have been made by the United States, and numerous military, naval, and air missions have been sent to Latin America. The construction of the Pan-American Highway has been expedited. A coffee-marketing agreement has been adopted. In short, the launching of literally dozens of such activities has demonstrated that the United States means business, and has enabled Latin America to take positive action against the fascist menace.

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[41] Jones and Myers, *Documents*, II, p. 107.

[42] Text in Jones and Myers, *Documents*, III, pp. 66–72.

[43] See J. I. B. McCulloch, *Challenge to the Americas* (New York, 1940), pp. 36 ff.

V. INDIVIDUAL VS. COLLECTIVE ACTION

Some exponents of power politics have objected that the United States, by "generalizing" the Monroe Doctrine, has tied the hands of the State Department, and that at any time we might find our vital interests in jeopardy without the power to act. Suppose, in time of crisis, agreement among the twenty-one republics could not be reached. Would we be willing to act independently against the wishes of some of our neighbors, even at the risk of discarding the good neighbor policy? Or would we, in demonstrating our good faith, deliberate in the presence of a clear and present danger? Charles Lindbergh's feat of flying the Atlantic by himself, the argument runs, was not half so wonderful as if he had done it with the aid of a committee. Still less would it be advisable to call an Inter-American Conference to deliberate on the desirability of taking action against a fleet of fascist planes ready to strike at Brazil.

In practice, a happy compromise has been reached. The Declara- of Lima suggests the possibility of independent action as well as the procedure of consultation. The Act of Habana (1940) is much more specific in providing that in emergencies which cannot wait upon committee action, "any of the American Republics, *individually or jointly with others,* shall have the right to act in the manner which its own defense or that of the Continent requires."[44] This point of view, moreover, was emphasized by the joint resolution of April 10, 1941, overwhelmingly passed by the House and Senate. If an attempt to transfer territory from one non-American power to another should appear likely, ran the resolution, "the United States shall, *in addition to other measures,* immediately consult with the other American Republics to determine upon the steps which should be taken to safeguard their common interests."[45] With this formula of acting first and consulting later, it is apparent that our national security has not been bartered away.

Emergency measures taken by individual states or groups of states are, of course, subject to review both by the public opinion of the Western Hemisphere and by the other nations in consultation. Thus far no sign of bad faith has appeared. The naval and air bases in Newfoundland and British Guiana, and in the islands of Bermuda, the Bahamas, Jamaica, St. Lucia, Trinidad, and Antigua, which we secured from Great Britain in exchange for overage destroyers were, to be sure, leased to the United States alone. As Lord Lothian pointed out, however, the British government granted the leases in order "to strengthen the ability of the United States to coöperate effectively with the other nations of the Americas in the defense of the Western Hemisphere."[46] And Washington hastened to assure the other American capitals that the facilities of these bases would be made available "on the fullest coöperative basis" to all American states for the common defense of the hemisphere.[47] Somewhat the same situation existed in the case of Greenland and Iceland. Thus the agreement of April 9, 1941, bestowed upon the United States alone the right to contruct and operate landing fields, harbors, roads, etc., in Greenland. Yet according to the State Department these facilities have been made available to the airplanes and vessels of all the American nations for common defense purposes.[48]

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[44] Text in Jones and Myers, *Documents,* II, p. 95. Italics mine.

[45] Public Law 32—77th Congress; text in Jones and Myers, *Documents,* III, p. 95. Italics mine.

VI. FASCIST IMITATIONS

A few words should be said at this point with respect to the Japanese and German counterparts to the Monroe Doctrine. Viscount Ishii wrote in 1933: "Generally speaking, our policy in China has been based upon the belief that the establishment of an *imperium in imperio* upon her soil by any powerful third nation or group of nations is not only derogatory to her integrity, but is also incompatible with our own security. In this we have been actuated by the same principle incorporated in the Monroe Doctrine."[49] Extending this argument, many unsuspecting Americans—as late as Pearl Harbor—have asked: "Are not Germany and Japan justified in their attempt to dominate Europe and the Far East? If the United States insists upon the Monroe Doctrine, can she deny the logic of Germany's *Grossraumordnung* or Japan's "New Order?" Even as late as March 16, 1942, the weekly publication of Father Coughlin declared that Japan's policy of Asia for the Asiatics "is nothing more than an expression of our own Monroe Doctrine."[50]

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[46] Lord Lothian to Secretary Hull, Sept. 2, 1940. *Bulletin*, Sept. 7, 1940, pp. 196–201.

[47] *Ibid.*, p. 196.

[48] *Bulletin*, p. 446, Art. IV of the Agreement. See also the statement of Acting Secretary Sumner Welles of July 1, 1941, in *ibid.*, July 5, 1941, p. 9.

[49] See his article in *For. Affairs*, Jan., 1933, p. 277. On June 14, 1940, Herr Hitler was quoted as disclaiming any interest in American affairs. "America for the Americans, Europe for the Europeans," he said. *New York Journal and American*, June 14, 1940.

On July 6, 1940, President Roosevelt's press secretary, Stephen Early, unwittingly bolstered this argument when he remarked that our government thought there should be applied a "Monroe Doctrine" for each of the continents.[51] This unfortunate remark, misinterpreted as it was, gave comfort and encouragement to fascist sympathizers. Mr. Early later explained, however, that he had by no means wished to advocate giving Germany and Japan a free hand on their respective continents, and on July 8 Secretary Hull announced that the correct statement of American foreign policy had been embodied in a note of July 5 to the German government. Mr. Hull's words are worth quoting:

> "It [the Monroe Doctrine] contains within it not the slightest vestige of any implication, much less assumption, of hegemony on the part of the United States. It never has resembled, and it does not today resemble, policies which appear to be arising in other geographical areas of the world, which are alleged to be similar to the Monroe Doctrine, but which, instead of resting on the sole policies of self-defense and of respect for existing sovereignties, as does the Monroe Doctrine, would in reality seem to be only the pretext for the carrying out of conquest by the sword, of military occupation, and of complete economic and political domination by certain powers of other free and independent peoples."[52]

In other words, there is as much difference between the Monroe Doctrine and its Axis counterparts as there is between day and night. With its imperialistic connotations gone, the Monroe Doctrine does not seek to suppress the liberty of peoples; it exalts no master race privileged to exploit other nations; it lays claim to no special interests or economic privileges for its sponsors. It is solely a collective policy of self-defense, designed to prohibit non-American states from acquiring territory or political control in this hemisphere.[53] Moreover, the United States has not resorted to aggression to find an outlet for its capital in Latin America. Nor has it claimed any special privileges in respect to trade or natural resources. The door in Latin America has stood open for all comers.

To be sure, the United States has drawn severe criticism for the use of armed force in the Caribbean. But even here there are sharp differences. In our interventionist activities, we have broken no important treaties such as the Kellogg Pact, the Nine Power

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[50] Cited in the syndicated column of Drew Pearson and Robert Allen, Mar. 26, 1942.

[51] *New York Times*, July 7, 1940.

[52] Text, in substance, in Jones and Myers, *Documents*, II, p. 92.

[53] See G. H. Blakeslee, "The Japanese Monroe Doctrine," *For. Affairs*, July, 1933, pp. 671 ff.

Treaty or the League Covenant—all wantonly violated by the Axis—and we ordinarily have acted in accordance with the desires of the local population. In all cases, too—Cuba, Haiti, Santo Domingo, Nicaragua—when it seemed necessary to intervene, we have respected the rights of the small state to live, and have withdrawn after the restoration of law and order. If the United States should honeycomb Latin America with fifth columnists, bomb it into submission, occupy it with troops, tanks, and ships, enslave its people, drain it of its raw materials, and at the same time severely restrict European and Asiatic trade, then a more logical analogy might be drawn between the two Doctrines.

VII. THE MONROE DOCTRINE AND ISOLATIONISM

On numerous occasions, isolationists have read into the Monroe Doctrine a duty on the part of the United States to refrain from interfering in European affairs. Under this interpretation, American-European relations must be on a *quid pro quo* basis; Europe should refrain from participating in the political affairs of the New World, and the United States in turn must not meddle with the political affairs of the Old. Given American devotion to the principles of 1823, this argument, bolstered by the fair name of Monroe, has had a tremendous influence on our foreign policy. As a result, we have the curious picture of Uncle Sam attending numerous international conferences always accompanied by the Monroe Doctrine, an over-anxious chaperon who puts a restraining hand on his shoulder whenever he is about to depart from the beaten path of isolation. In 1899, our delegation at the Hague Conference signed the convention for the pacific settlement of disputes with the reservation that nothing in the convention should be construed to "imply a relinquishment by the United States of its traditional attitude toward purely American questions."[54] And after the war the opponents of the League, the Permanent Court, and the Kellogg Pact waged their offensive largely on the ground that our joining would mean a repudiation of the principles for which Monroe stood.

In 1940, this argument was appropriated by the German government. Replying to a note of June 18, suggesting that the United States would not recognize any transfer of territory in the Western Hemisphere from one non-American power to another, the German Minister of Foreign Affairs objected that our interpretation would deny to certain European states the right to possess territories in the American region. Such an interpretation obviously "would be untenable." Furthermore, concluded von Ribbentrop, "the non-intervention in the affairs of the American continent by European nations which is demanded by the Monroe Doctrine can in principle be legally valid only on condition that the American nations for their part do not interfere in the affairs of the European continent."[55]

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[54] Moore, *Digest*, VI, p. 594.

In his statement on the German note, Secretary Hull pointed out that the United States "pursues a policy of non-participation and of non-involvement in the purely political affairs of Europe. It will, however, continue to coöperate . . . with all other nations, whenever the policies of such nations make it possible, and whenever it believes that such efforts are practicable and in its own best interests, for the purpose of promoting economic, commercial, and social rehabilitation, and of advancing the cause of international law and order . . . "

In rendering this interpretation of the Monroe Doctrine, Secretary Hull stood on firm ground. The Doctrine, in fact, was never intended to be a perpetual pledge of American isolation. Nor were the men who made it dogmatic followers of a blind stay-at-home policy. Rather, they were realists who based their action upon hard, cold facts, not upon any blanket formula. The best interests of the American nation called for the adoption of the Doctrine as the logical method to meet a particular dilemma. That is why it was issued in 1823. Such leaders as Jefferson, Madison, and Monroe even then were inclined to cast our lot definitely with Great Britain and give the Doctrine to the world as a joint enterprise.[56] And even Adams, whose view finally prevailed, promised that "should an emergency occur in which a joint manifestation of opinion by the two Governments may tend to influence the Councils of the European Allies," the United States would "cheerfully join in any act, by which we may contribute to support the cause of human freedom and the Independence of the South American Nations."[57]

It follows, as Secretary Hull reminded the German minister, that the Monroe Doctrine "is solely a policy of self-defense, which is intended to preserve the independence and integrity of the Americas." As such, it involves no self-denial on our part, or any promise to confine our activities to the Western Hemisphere. We have never, in other words, yielded the right to protect American interests abroad or to take any action which our national welfare demands at any time. This fact has been strikingly demonstrated during World War II by the numerous laws, resolutions, and conventions subscribed to by the United States which certainly involved a measure of interference in the affairs of Europe.[58] Yet, now that the tremendous power of fascism has become known, the fallacy of supinely waiting for the enemy to meet him on our home grounds is obvious. Let us hope that World War II has vaccinated the Monroe Doctrine forever against the virus of isolationism.

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[55] From Secretary Hull's synopsis of the German reply, *Bulletin*, July 6, 1940.

[56] Moore, *Digest*, VI, p. 397; Madison's *Works*, III, pp. 339–341; Hamilton, *Writings of James Monroe*, VI, pp. 323 ff; Ford, *Writings of Thomas Jefferson*, XII, p. 318.

[57] For text, see W. C. Ford, "John Quincy Adams and the Monroe Doctrine," *Amer. Hist. Rev.*, Oct., 1902, pp. 22 ff., cited in Perkins, *Hands Off*, p. 48.

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In this recent outburst of Inter-American coöperation in the financial, economic, political, cultural, and defense areas, the optimist may see a cheery omen for the post-war world. Great strides have been made toward collective security and an effective sanctions system. Nor will the treaty of peace bring to an abrupt halt many of the projects already launched; certainly the development of American resources (rubber, tin, etc.), the construction of huge new plants, and the blueprints for transportation facilities in Latin America are long-run designs. Coöperation for the duration only would be both inexpedient and unprofitable.

That long-range plans are being laid in Washington and in various Latin-American capitals is no secret. The Rio Conference not only applauded the terms of the Atlantic Charter, but accepted several far-reaching principles which point to continued close collaboration in exploiting the wealth of the Americas and raising the standard of living of its people. "Collective security," resolved the Conference, "must be founded not only on political institutions but also on just, effective, and liberal economic systems. . . ."[59] Resolutions referred to the need for "equal opportunities for all Nations" in the realm of world trade, and for the "new economic and political order" necessary for world peace. That the Conference meant business is shown by the fact that it instructed the Pan-American Union to look forward to the peace and to convoke a conference for the study of post-war problems. World War II, utilizing the new Monroe Doctrine as its cement, may be building a genuine base for Pan-American unity in the future.

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[58] See P. C. Jessup, "The Monroe Doctrine in 1940," *Amer. Jour. of Int. Law.* Oct., 1940, p. 708.

[59] *Bulletin*, Feb. 7, 1942, pp. 134, 135.

THE REVIVAL OF ORGANIC THEORY

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Theories of the nature of the political community vary with conditions. Just as political pluralism was a phase of the late mellowness of liberalism, so the organic theory of the state is suited for more heroic moments. When integral nationalism was discovered in the United States after the defeat of the South, it was not inappropriate that organic theories should have been supported in order to explain the place of the American nation in history. Nor can it be surprising that today some of the leaders of the United States are looking at the nation as a kind of social organism.

If one reads with attention the words of President Lincoln during the early days of the Civil War, it can be seen that the Union was more than just a voluntary association of political communities. The states had their being within the Union, and the Union itself had given birth to the states. Even the history of Texas and its relation to the Union did not impress Lincoln as simply consensual, for if there was consent it was all on the side of Texas.[1] Whatever liberty and authority the states possessed they derived from the Union, and not from any original powers of their own. When the Union became a symbol of organicity in the mind of the North, the earlier individualistic theory of the state was remote enough. The social contract, the consent of all to government, was suitable in the American Revolution, since protest was being made against the specific, arbitrary actions of the British government, animated it would seem by a total conception of Empire. To Lincoln, states, like individuals, were a part of the Union, and the Union might be broken neither by citizens nor by states.

Even before the Civil War, the principles of Manifest Destiny and the variously associated doctrines which justified expansion carried some implications of the organic character of the American nation. History, Providence, the finger of destiny—all indicated that the territory to the north and south, east and west, should become a part of the United States. The superior rights of the American nation over Indians and culturally diverse peoples were easily, even casually, asserted. The Mexicans, in the war with that nation, were regarded as an inferior and benighted people whose historic opportunity was less than that of Americans. It cannot be said, of course, that the principle of Manifest Destiny was ever systematically explored as social doctrine, not even in the great debate of 1900 between the Democrats and Republicans over our policy of Asiatic expansion. But behind whatever doctrine might be used to justify a particular territorial expansion lay the assumption that the American nation was a unified whole, at least against all other nations, and that we had a mission to bring liberty and republican institutions to those not favored with our blessings.[2]

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[1] See special session message, July 4, 1861.

We can say, therefore, that the ground was being patiently tilled for the later and more rounded assertions of national organicity. Lincoln stands between the legalistic constructions of the Union and the assertion after the Confederate War of a genuine or explicit theory of the national organism. The purely legalistic and historic conceptions of Webster and Story give place lightly to the conception of the moral unity of a people which is superior to any documentary technicality. The publicistic assertions of the organic nature of the Union and the nation in the years following the war raise a number of questions. Were writers such as Brownson, Hurd, and Mulford[3] expressing anything the American people, outside of the South, really felt? Or were they just copying European doctrines on the nature of the state which had no relevance to American conditions? Had not American nationalism gone beyond the simple assertion of the subordination of the states in the Union? Had we not progressed for the moment to the view that the individual is morally a part of the greater social whole? If we may feel sure that organic nationalism in the years after the war was a continuation and an expansion of earlier doctrines, may we not also feel that there was a general conviction that behind the Constitution was the Union, the morally united society of American citizens? If such is the case, we cannot dismiss lightly the organic nationalists of the generation after the War. They were expressing the more refined and intelligent convictions of men in the perspective of four years of struggle for the preservation of the nation.

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[2] See, in general, Albert K. Weinberg, *Manifest Destiny; A Study of Nationalist Expansionism in American History* (1935).

[3] See O. A. Brownson, *The American Republic* (1866); John C. Hurd, *The Theory of Our National Existence* (1881), and *The Union State* (1890); Elisha Mulford, *The Nation* (1870); Thomas I. Cook and Arnaud B. Leavelle, "Orestes A. Brownson's 'The American Republic,'" *Review of Politics*, Vol. 4, pp. 77 ff. (1942).

The discovery of the nation required a coherent statement of the basis of the nation.

Nationalism leans toward the subordination of the individual to the historic experience of a people. How could we feel that the American nation had a mission to the rest of mankind if we did not also feel that all individuals participated in that mission by the mere fact of being a part of the larger whole?[4] The defense of the nation, along organic lines, in the works of Francis Lieber and John W. Burgess is not to be regarded as an erratic statement of political philosophy. These writers were continuing the older, yet half-articulate, theories of organicity in national life. While Lieber spoke more of the contribution of the nation to civilized and free life, Burgess accepted also the principle of the superiority of the Teutonic peoples, including Americans, in the building of national, and therefore free, states.[5] We may urge also that Southern thought, in its defense of Southern nationalism, was not implicitly different. The defense of the hierarchy of a slave society demanded the assertion of the supremacy of the community over the individual. The work of Calhoun indicates clearly a kind of regional organicity which the total nation was unwilling to accept.[6]

We are today engaged in a vast struggle in which the individual must be asked not to assert his individuality except in terms of the larger needs of war. The individual is a functional unit of the larger whole; the unity of the nation must transcend the diversities of thought and interest which are the luxuries of a more stable hour. Anger is rising against the presumption of class interests; labor faces a mounting volume of recrimination, which may well be followed by the assertion of national authority against its traditional claims. Business leaders who fail to perform the duties of production in war are being exposed and pilloried by investigating committees in Congress; and professional interests, such as medicine, are being mobilized in terms of military functions. Even the Gallup Poll, which implies constant division of opinion among the people, has faded from the picture, and censorship assumes a moral responsibility for the information which the average citizen may rightly have. It is a time in which we turn, as often before, to the nation as something which stands above the morality of individuals and groups; as men turn to the nation, they accept the moral purposes which are schematized in the utterance of leadership. The rights of individuals have meaning only in the significance of the rights and duties of the nation in a world of conflict.

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[4] See, in general, Ralph H. Gabriel, *The Course of American Democratic Thought* (1940).

[5] See Francis Lieber, *Political Ethics* (1838–39), and *Civil Liberty and Self-Government* (1853); John W. Burgess, *Political Science and Comparative Constitutional Law* (1890).

[6] See *The Works of John C. Calhoun*, ed. by R. K. Crallé (6 vols., 1853), Vol. I.

A statement of prime importance in the changing theory of the state in America is the third inaugural address of President Roosevelt. The mere fact that it was the *third* inaugural has symbolic significance, for it is only a people which recognizes the moral import of the nation or the community that will stress the ethical contribution of strong leadership. In part, we have witnessed a mass flight of American citizens from the moral connotations of individuality. Times of trouble suggest to the most sturdy the moral superiority of the whole, of the group, and the ethical import of leadership. If the British may use the symbolism of monarchy to maintain the sense and integration of the whole, the American must glorify leadership, whether dead as in the case of Washington, Jefferson, and Lincoln, or living as in the case of Franklin D. Roosevelt. We must urge, of course, that the moral response to leadership may fail with leadership itself, while the response to the organic nation involves a symbolism which, like the king, can do no wrong.

In the third inaugural, the President said:

> "Lives of nations are determined, not by the count of years, but by the life-time of the human spirit. The life of a man is three-score years and ten: a little more, a little less. The life of a nation is the fullness of the measure of its will to live. . . .
>
> "A nation, like a person, has a body—a body that must be fed and clothed and housed, invigorated and rested, in a manner that measures up to the standards of our time.
>
> "A nation, like a person, has a mind—a mind that must be kept informed and alert, that must know itself, that understands the hopes and the needs of its neighbors—all the other nations that live within the narrowing circle of the world.
>
> "A nation, like a person, has something deeper, something more permanent, something larger than the sum of all its parts. It is that something which matters most to its future, which calls forth the most sacred guarding of its present."

What do these statements imply? Were they accidentally inserted in the inaugural address? We can hardly think so, for the address is a peculiarly responsible utterance. They are in the address because they fit the spirit of the times, just as Lincoln's words on the nature of the Union bespoke the rising convictions of the North. As the President insists that individuals must seek their moral stature in the nation, so the individual is willing, in times like these, to agree.

There is nothing of the cruder concept of the social organism in the Rooseveltian theory of the organic nation. Neither the literalism of a John of Salisbury nor that of a Bluntschli is to be found in it.[7] The American nation is plainly a moral rather than a physiological organism. Implicitly, the President's position is like that of the British idealists, such as Thomas Hill Green, whose *Lectures on the Principles of Political Obligation* might well be understood in the present conflict in which the United States is engaged. True, idealism of this nature is authoritarian and to a degree *étatist*,[8] but it is not theoretically arbitrary in relation to individuals. It assumes a general will, as did Green—a general will which is the expression of the permanent, common interests of free men, that is to say, morally free men and not capriciously so. It assumes likewise that the national state is the widest permanent expression of that set of common interests which is the basis of all morally free existence.

On the other hand, we must go farther. Most political leaders have moved in the direction of the organic nation. We must distinguish between the organic theory of the authoritarian states and that of the democracies. One statement in the Roosevelt exposition of the doctrine emphasizes the international relationship of nations. The permanent nation is in the context of relationship with other such nations. While the nation may not, implicitly, be submerged in the international society, it nevertheless draws part of its moral inspiration from a common democratic society extending over the world. We cannot see the idea of the superstate in Roosevelt's theory; the moral functionality of modern man comes first from the nation, and reflects itself in terms of assistance to other nations animated by similar moral and democratic purposes. In statements by Mussolini, for example, which assert a somewhat similar doctrine, the highly significant international element is completely omitted.[9]

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[7] See Francis W. Coker, *Organismic Theories of the State* (Columbia University Studies, Vol. XXXVIII, 1910).

[8] Cf. William M. McGovern, *From Luther to Hitler* (1941).

[9] "The Political and Social Doctrine of Fascism," *International Conciliation*, No. 306 (1935).

Thus we reach the conclusion that it is only the democratically informed nation that contributes to the moral growth and the future of the individual. But democracy again is not limited to particular structural or political devices; it is a spirit of freedom in subordination to the community that gives it form and vitality. The moral claims of such a community reach above the claims of any class or theory for the organization of society; plainly, the moral content of society is more significant than the materialistic or economic basis of the community. If we would seek analogy from the history of political thought, we should turn, in addition, to the idealism of Green, to the historicism of Burke. When Burke was rejecting the violence of the French Revolution and the revolutionism which was sweeping Europe, he turned to the moral continuity of the nation. Society was a contract, but it was a contract for the future—an implicit, necessary and unbreakable agreement between the dead, the living, and those yet to be born.[10] When Roosevelt speaks of the mind, the body, and the future of the nation, he is speaking as Burke might speak today were he again to face the swelling tide of revolution and try to stem it with his own torrent of words and patriotic emotion.

As Roosevelt interprets the organicity of the American nation, there is continuity in the structure and morals of our society. There is a continuity which those newly attaining the age of citizenship must accept, and before which must bow those who come in their maturity to the responsibilities of American society. The American nation as a functioning, historic organism rejects the fascist revolution and the authoritarianism of the dictatorships; it rejects likewise, it would seem, the discontinuity in national morality implied in socialism. Roosevelt's doctrine is, withal, a doctrine of conservative nationalism. There is authority, legitimate authority, in the nation because of the moral contribution it makes to the life of each citizen. Because of this, there is permanence in the national organism. The morality of a national society expresses itself in a unified will—a unification which may be far beyond the conventional principle of federal decentralization embodied in the old but remodeled Constitution.

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[10] *Reflections on the French Revolution, and Other Essays* (Everyman's Library, 1910), p. 93.

FICHTE AND NATIONAL SOCIALISM

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Next to Hegel and Nietzsche, Fichte is the German philosopher most frequently blamed as one of the principal inspirers of the National Socialist ideologies of state despotism and the superiority of the German people. Indeed, it is not difficult to find in Fichte's work any number of passages which might be interpreted in such a way as to corroborate these views.[1] In the writings of his middle period, around 1800, Fichte arrives at a despotism of reason which in its practical application might be even more consistently restraining than the rule of our modern dictators. In his programmatic speeches for the restoration of the German nation, he ascribes to his people a divine mission which has shocked many of his interpreters. Therefore we cannot be surprised that historians who, in accordance with the demands of their profession, lay more stress on the effects of thoughts and actions than on the intentions which motivate them, attribute to Fichte a good share of responsibility for the ideology of the National Socialist party and its hold on the German people. Yet these historians are right only with regard to the external form, while the intended aims of the two systems of thought are diametrically opposed to one another.

On the whole, Fichte is a moral idealist whose principal concerns are the political and inner freedom of the individual, the right and duty of the individual to contribute his best to the welfare and the cultural progress of his nation, the independence of all nationalities, social security, and an acceptable standard of living for every human being. These demands are based on a genuine respect for the dignity of man and the desire to contribute to the rule of humanitarian values in all human relations. The National Socialist, on the contrary, is fundamentally an egotistic materialist, a ruthless *Herrenmensch,* with a deep-rooted contempt for freedom, equality, and all humanitarian values.

Fichte began as a radical liberal and a Jacobin. As such, he condemns the absolute rulers for the exploitation of their subjects and the aristocracy for their arrogance and immorality. He demands the abolition of serfdom and the right of every citizen to a minimum standard of subsistence. He denounces the controversies of the theologians as intolerant irreligion, and rejects the dogmas of the Church as useless for the moral education of the masses. With the rationalists of the eighteenth century he shares the belief that man is good and gifted with a reason that enables him to control his affairs with a minimum of governmental interference.

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[1] Cf. Peter Viereck, *Metapolitics* (1941), and Hans Kohn's review in *The Nation,* Oct. 11, 1941.

In the writings of his mature period, Fichte realizes that the Jacobin *laissez-aller* attitude could be practicable only if men were as good as the rationalists considered them to be, and if they actually followed the guidance of reason and moral conscience when left to themselves. But the refutation of the naïve, optimistic assumption of man's natural goodness by the development of the French Revolution caused Fichte to adopt a melioristic conception of man. Man is neither good nor bad; nor is he normally inclined to judge and decide for himself. He prefers to be driven by circumstances and the decision of others. Therefore one must create circumstances under which man would be relieved of the pressure of dire necessity and must then educate him to the proper use of reason. Thus reason, which had theretofore been assumed to be a property of man, now becomes a moral postulate: man has the ability, and therefore the obligation, to *become* the reasonable master of his destiny. Consequently the state is given the power to create those physical conditions under which such an aim can best be achieved and to educate the masses to the state of reasonableness.

Whatever National Socialist theorists may say about the freedom of serving the state, in practice the citizen of the Third Reich is nothing but an instrument of the leader of the state and his imperialistic projects. Purity of the Aryan blood, physical fitness, and blind obedience are the virtues considered most essential. What is good or bad, reasonable or unreasonable, is the concern of the leader alone, whose only criterion is expediency of the moment. The state assumes responsibility for the physical welfare of its citizens for no higher aim than to make them ready to die for the glory of *Führer* and fatherland.

Fichte's political ideal is, in the first place, a welfare state. Superficially, it has much in common with the absolutistic state of his time. Although he repudiates the despotism of the absolutistic régime, with its concern for the happiness, the property, the health, the beliefs, the virtues, and the eternal salvation of its subjects, he extends the function of the state to include the regulation of all practical affairs of life. Yet he remains a liberal republican with regard to the purpose of the state, which is to free man for his essential duty, the use of reason.

In his treatise *Der geschlossene Handelsstaat* ("The Closed Commercial State"),[2] Fichte applies his energetic and functional view of knowledge and life as *doing* rather than *being* to the economic foundation of the state. Adopting the medieval idea of real property as fief of the state, he substitutes for the static conception of property as personal possession of things the dynamic conception of property as fruition of the produce. The underlying idea is that of social justice and equality: every citizen has an inalienable right to a comfortable subsistence. With a flexible population, such subsistence can be guaranteed only if ownership is kept flexible and adjustable to the needs of the individual. Therefore the state must own the soil, the natural resources, and the means of production, and also have the right to redistribute the use of all means of subsistence according to reasonable demands and needs. Thus Fichte's political ideal of the closed commercial state resembles modern European dictatorships. But it is a communistic rather than a Fascist or a National Socialist state. In the administration of the state, Fichte's main concern is the welfare of the masses in accordance with the humanitarian principle of social justice. Fascism and National Socialism share with Fichte's ideal state the extraordinary control of property; yet neither the Italian nor the German government has ever attempted to expropriate systematically the owners of large estates and to undertake a more equitable distribution of wealth; they have expropriated industrialists, Jews, and political dissenters solely for the benefit of the ruling party and the war-chest, and have continued a well-established social insurance and public welfare system only as a means for gaining the support of the masses. The aim has been the enslavement of all inhabitants of the living-space for the benefit of the Aryan master-race. The humanitarian principles of social justice and equality of men are prostituted for this ignoble purpose.

Since the basic function of the rationalized state is the proper distribution of the means of subsistence, the state, in order to control this distribution permanently and effectively, must maintain the proper balance among the producers, the manufacturers, the merchants, the relatively small group of state officials, the teachers, and the army. The state regulates the number of people employed in the various professions by the system of the *numerus clausus*, that is, by constantly balancing and controlling the number of future members of the various professions. The system of the *numerus clausus* had been applied in Germany in the academic professions even before Hitler. It is more rigidly applied in the Third Reich, not as a means of stabilizing and securing the general welfare, but is completely distorted in favor of the Aryan super-race, and especially for the benefit of the minority belonging to the ruling party. The obvious disadvantage of any such system is that, by its extreme rationalization, it endangers the ultimate end of Fichte's state—the cultivation of reason. For by limiting the free choice of professions one necessarily limits the chance of finding those few outstanding persons of talent on whom the development of knowledge and culture depends. This danger, however, is infinitely greater for the National Socialist state than it would have been for Fichte's imaginary state, because the restrictions which Fichte proposes concern only the basic distribution among the professions without any intent to limit the access of the whole population to the spheres of knowledge and cultural achievements. Furthermore, his state would deal only with large groups, and not with a minority selected on non-intellectual principles.

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[2] Cf. also *Das System der Rechtslehre.*

Fichte also tries to solve the problem of balancing the distribution of goods. His state would supervise the proper flow of goods from the producer to the manufacturer and to the consumer, so that no citizen would ever lack the necessary products and would obtain only those luxuries which could be procured without restricting the production and distribution of the necessities. He would also completely isolate his state from foreign countries, particularly from those living under the economic system of free competition and free trade. The producer must not be hampered by unrestrained foreign competition, and the consumer must be protected by a reasonably stable currency. Therefore Fichte provides that no individual citizen be allowed to trade with foreign countries and that all necessary exchange of goods in foreign trade be handled by the state. In order to maintain its independence, the state should strive for self-sufficiency. Self-sufficiency, according to Fichte, is not possible until the state has reached its natural boundaries; the territory of the state must comprise enough agricultural area and enough natural resources to provide those products which are absolutely essential for a decent subsistence of its population. The natural economic boundaries of the state must therefore be secured, even at the expense of war; indeed, wars are inevitable as long as these conditions have not been met.

The National Socialist measures of rationing, of self-sufficiency, and of living-space thus may have a counterpart in Fichte's Utopia. Yet they are totally different in purpose and application. Rationing and self-sufficiency were conceived by Fichte, at a time when Germany was an agrarian state, as a means of releasing as many energies as possible for the higher, cultural aims within the nation and of eliminating all economic friction and thereby obviating the danger of war with other nations. National Socialist rationing and self-sufficiency are means of accumulating monetary reserves for the importation of war material. The apparent ruthlessness of Fichte's conclusion that a living-space must be established even by military conquest is greatly alleviated by the complementary provision that the same country which acquires territory in this fashion must also voluntarily cede to neighboring countries those territories which do not belong to its natural sphere. Moreover, the creation of natural territories is advocated to the end that future wars may be obviated; and it is understood that the natural territories would coincide roughly with the boundaries of national groups. All further expansion, particularly colonial conquest, is definitely rejected; and once the natural boundaries of a nation have been established, all possible guarantees are to be given to respect the integrity of neighboring countries.

Fichte's proposals for the creation of self-sufficient states must also be considered in the light of the conditions prevailing in Germany around 1800. The country was then divided into hundreds of small, independent principalities, duchies, counties, etc. Most of these principalities consisted of numerous small fragments, which, in the case of Prussia, were scattered over the whole of Germany from the Rhine to East Prussia. Fichte's advocacy of expansion, therefore, was, on the whole, an advocacy of civil revolts against a useless lot of potentates, and not an encroachment upon the rights of other nations. The modern theory of living-space is based on almost exclusively economic considerations; it demands control of all the natural resources vital to modern industry; it means the conquest, or, at least, the economic and political control, of Europe and the acquisition of colonies in all parts of the world. While

Fichte accords the right of living-space to every nation and imposes lasting restrictions on the people of his Utopian state, National Socialism makes living-space an exclusive prerogative of the German race and ruthlessly invades every country which refuses to submit to its economic control. The issue of uniting German nationals in one state has been discarded as soon as it had fulfilled its purpose of deception; nationalism is nothing but an instrument of the economic and political machine. Despite their megalomaniacal claim of racial superiority, the National Socialists unscrupulously sacrificed national honor and the best of German tradition to economic materialism.

In order to make the isolation of his state effective, Fichte further proposes currency restrictions which would prevent the accumulation of wealth and prohibit transactions with foreign countries. The money of the closed commercial state has only an artificially stabilized exchange value. It is not backed by a gold reserve, but by the consumers goods available in the country. The state regulates the proportion between the amounts of goods in circulation and the amount of currency. Gold as a means of international trade is the exclusive property of the state. Travel to foreign countries is limited to those whose purpose would serve the material and cultural interests of the state, that is to craftsmen and manufacturers who want to study foreign methods of production, to scholars and artists whose work depends on international exchange of ideas, and to statesmen.

Again we notice a close parallel to the economy of the National Socialist state, which maintains a double currency, one for internal and one for foreign circulation, and which restricts foreign travel in order to tighten the closed economy. But again the reasons are diametrically opposed to one another. Fichte's measures are self-imposed restrictions intended to increase the external and internal stability of the state and thus provide the best possible conditions for the development of national and cultural values. The National Socialist measures were born of necessity, and later systematically abused to undermine the foundations of world trade and thereby to destroy the political structure of creditor states. In the hands of unscrupulous exploiters, these restrictions have become instruments of territorial expansion in a "white war."

By isolating his country from other nations, Fichte hoped not only to secure a moderate standard of living for his people, but above all to awaken a national consciousness which had been dormant for centuries in the German people. He hoped to develop a national character distinct from others because he believed that only a strong individuality would be able to create higher moral and cultural values, and that a people with national self-respect would respect other nationalities as their equal and would provide sufficient guarantee for international understanding, enduring peace, and the moral progress of humanity. National Socialism professes to use the same economic means for similar ends: a strong, united, self-respecting Germany is to become the center of the New Order which would guarantee economic stability and thereby the welfare of Germany, Europe, and humanity itself.[3] In practice, however, the economic restrictions of the Third Reich are used as an instrument to crush all individuality in favor of the state machine. The National Socialists aim at transforming Europe into an immense factory in which every human being labors as a slave under the lash of one chief engineer, a bureaucratic, arrogant, ruthless central authority. The New Order is an attempt to destroy any individual national character in its orbit in favor of an absolutely impersonal, and therefore a most inhumane, economic system.

The closed commercial state is a *Zwangsstaat*, a coercive state, which imposes enormous restrictions upon individual rights and individual freedom. Yet Fichte maintains in all his writings that freedom is the purpose of life, and he never ceases to attack the oppressive government of the absolutistic rulers. The resolution of this paradox is to be found in his conception of man, not as an individual, but as an integral part of human society, and of national community in particular. That is the explanation which Fichte gives, for instance, in *Die Grundzüge des gegenwärtigen Zeitalters*, when he says that "in a perfect state there is no individual aim which has no relation to the whole and is not provided for by the whole." That is, man is the freer the less he is guided by his own personal interests and the more he is motivated by loving care for the physical and spiritual welfare of his fellow men. Fichte himself describes the dilemma of freedom and coercion in the third chapter of the *Staatslehre* as follows: "Everyone has the moral obligation to act according to his insight; but what is right can be learned and generally accepted only by means of preceding coercion. Coercion is the instrument by which the individual is changed from a being of nature into a spiritual being. The coercive state is a state which educates its citizens in preparation for a state ruled by the insight of everyone of its citizens (*ein Reich aus der Einsicht aller*)." Thus political freedom is the exact opposite of Fichte's own earlier Jacobinism; it is a moral quality which cannot be attained by the average individual at the present stage of mankind.

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[3] Cf. Hitler's speech of Jan. 30, 1942.

If there were any reason to believe the theoretical statements of National Socialism, one might find a great similarity between their principles and those of Fichte. National Socialism subordinates the interests of the individual to those of the state. It, too, believes that every citizen must be brought to the point where he can see in the dictates of the state authorities the expression of his own free will. The radical difference is almost too obvious to be indicated explicitly. Fichte's coercion is devised only as a legal, educative instrument to promote cultural achievements of the people, and it is a temporary substitute for a deficient moral conscience, a substitute based on intelligible humanitarian principles. Quite apart from the brutal form coercion assumes inside and outside of the German national boundaries—a form which Fichte would have abhorred as a crime against humanity—National-Socialist coercion is a device for controlling those who have no understanding of the concept of "blood and soil," a principle so obscure that it requires the constant interpretation of the national high-priest and his "intuition." This means, of course, that coercion must remain a permanent institution, and cannot possibly produce anything except stupid and cowardly submission to the dictates of a tyrant lacking the most fundamental respect for human lives and humanitarian values.

The authorities of Fichte's state may exercise coercion only if they are willing to demonstrate their right to do so before the people, and when they exercise it as a means of educating their people politically and morally so that they can finally take a more active part in the government of the state. The aim of coercion is education to a freedom that would make coercion unnecessary.[4] In his earlier period, Fichte left education entirely in the hands of the parents, in order to preserve the children from becoming submissive tools of the privileged classes. Later, he assigned part of the task of education to societies such as the Free-Masons,[5] and finally to the state. The educational program which Fichte outlines in the *Reden an die deutsche Nation* is based on Pestalozzi's ideas, and is almost military in its discipline and its emphasis on physical training. The aim, however, is to educate independent moral characters, motivated by self-respect and respect for others, and not by fear of punishment and hope of reward. The teachers must possess the highest intellectual and moral qualities; for they have the responsibility not only for the advancement of knowledge but also for that of moral freedom of the individual, of the state, and, indirectly, of all mankind. In spite of some statements made during the troubled years of national disgrace and the Wars of Liberation, Fichte never challenges the absolute validity of humanitarian values, and even his nationalism is closely connected with the idea of a better mankind. One must be a good patriot to be a good cosmopolite; one must be a good citizen to be a good Christian—such is his maxim.

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[4] *Die Staatslehre*, 2. Abschnitt.

[5] *Philosophie der Maurerei.*

National-Socialist education, too, entrusts the whole of education to the state; it, too, emphasizes discipline, physical strength, and militant virtues. It pretends to educate men of unbending character. Yet here the analogy with Fichte's educational aims comes to an end. Indoctrination with party principles is not education to freedom, but enslavement and mechanization of the mind. Submission to a rigid discipline which allows no question as to the end of one's action is not manliness but cowardice; it is not self-respect but abjection. Respect is confined strictly to the Aryan race, and specifically to the hierarchy of party and state; respect for all others, even for one's nearest relatives, is systematically undermined. Humanitarian values and Christian virtues, which Fichte regarded as the highest possession of man, are vilified as incompatible with the honor of a true Aryan.

At first reading of some of Fichte's most patriotic productions, one might receive the impression that, in spite of his numerous attacks upon the absolute régime, he was an absolutist himself. The validity of this impression cannot be denied; yet Fichte's absolutism is as republican in these writings as was the liberalism of his Jacobin period. He rejects equally an absolute democracy and an absolute monarchy, one because of its *laissez-aller* liberalism tending toward pacifism at any price,[6] the other because of the danger of irresponsible administration of the state and selfish foreign politics. According to *Grundlagen des Naturrechts,* the ideal government would be elected by the people or appointed by the "wise men." Its officials should be chosen from the educated class because they alone combine the ability to rule with a sense of responsibility. The power of the state is centered in the executive. His power, however, is checked by a body of intelligent and incorruptible men, the ephors, who have an absolute veto power over all his acts, and by the people themselves, who have the right to discharge the government or to rebel against it. Even in the more conservative *System der Rechtslehre,* in which the ephors are omitted, the people must be kept informed about all actions of the executive, who is bound by a constitution. This constitution is to guarantee the equality of all citizens, a common education, and appointment to state offices according to ability.[7]

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[6] *Die Staatslehre,* 2. Abschnitt.

The republican principle may be obscured by the immediate aim of establishing a strong national community, a desire which grew out of the emergency of the Napoleonic era. Yet Fichte never failed to emphasize that the remote purpose of the state is, and must be, the freedom of the people to govern their own state with full responsibility. All coercion must be part of an education toward this aim of freedom. The same principles of moral responsibility must govern international relations. Fichte is a strong advocate of a world court and a league of nations. His nationalism derives its strength from the vision of a cosmopolitan order in which each nation must preserve its own strong national character and combine self-respect with respect for other nations.

Like Fichte, the National-Socialist state concentrates all power in one executive. But he is not bound by any constitution, there is no veto power, no expression of the popular will, no equality except the equality of the Aryans in being exploited for the imperialistic aims of the ruler. There is no hope for a future release from suppression; the aim of education is to produce the mentality of slaves and cowardly brutes. The same principle prevails, in even greater ruthlessness, in the relation to other nations, who are to be subjected, both economically and politically, to the rule of one without any respect for their own national character and interests.

One must keep this fundamental difference in mind when judging the *Reden an die deutsche Nation,* in which Fichte attributes everything good to the German people and everything bad to all other nations. Germany has the true philosophy, the true organic state, the belief in the perfectibility of mankind, whereas the other nations are more or less realistic and utilitarian in their conception of life, they know only their own immediate interests, which are protected by an artificial and dead state-machine. One may explain such extreme statements as products of a war psychology created by the presence of any army of occupation. What counts more, however, is the fact that Fichte does not give a picture of what the German people really are, but what they should become in the future. It is his desire that they use their present crisis and their misery to reform their own individual and political life, to free themselves from all external bondage, and to *become* the elect people in their striving for the realization of a spiritual community of man. The very fact that Germany as a state was still in chaos gave him the hope that she might inaugurate a moral political order. Thus even the most fervently nationalistic of Fichte's works is not a prophecy of German racial preëminence, but a challenge to take the lead in responsible world-citizenship. Its spirit is diametrically opposed to that of National Socialism.

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[7] *Aus dem Entwurfe zu einer politischen Schrift im Frühlinge 1813.*

Fichte has been proclaimed a national hero, a prophet of Pan-Germanism, and blamed as an advocate of Machiavellian a-moral politics and a champion of tyrannical power of the state over the individual. On the other hand, he has won praise as a republican, a socialist, an advocate of a league of nations. He is quoted by the National Socialists in support of their supernationalism, and is worshipped as a forerunner of Marxism by the Bolsheviks.[8] Every great idea has its good and its bad effect. That is human tragedy. Perhaps the greatest idealists of history have caused the most misery in this world. They should, however, not be held responsible for those misinterpretations and misapplications which have their origin in the materialistic selfishness of a political group or constellation that would find its severest condemnation in those works by which it may have been influenced. If one discounts the radical extremes of Fichte's state socialism, the conscientious application of his republican, cosmopolitan, and moral ideals to the world of today would be a great service to mankind. Instead of finding in Fichte another proof for an incorrigibly warlike German mentality, one should rather emphasize the undeniable fact that National Socialism betrays the best German tradition and debases the German character.

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[8] For further detail, see H. C. Engelbrecht, *Johann Gottlieb Fichte; A Study of His Political Writings with Special Reference to His Nationalism* (Columbia University Press, 1933), pp. 9 ff and 160 ff.

Pressure Groups. In recent political literature, pressure groups have frequently been condemned as a deleterious element in American government. One scholar in the field of political parties writes: "In the economy of democratic government the pressure group is definitely a parasite on the wastage of power exercised by the sovereign majority."[1] Another scholar uses the following harsh language: "There exist socially created constraints which emanate from less sanctioned or less responsible sources, informal and opportunistic in their operation; they fluctuate incessantly in intensity and direction. These constraints may be called social pressures. . . . In R. E. Park's comment: 'The pressure group is not an army which seeks to win battles by frontal attacks on hostile positions; it is, rather, a body of sharp-shooters which pick off its enemies one by one.'"[2] Another student of politics, in a denunciation of pressure groups, says: "It is a testimonial to the faith, the tenacity, or the credulity of the American people that after 150 years they still cling to the forms—without the substance—of democratic government. Since the founding of the Republic the democratic process has been perverted to a greater or less degree by cunning and powerful minorities bent on serving their own interests. The ideal of rule by the majority for the good of the many has been illusory from the start."[3] Mr. Justice Hugo L. Black, when a senator from Alabama, in indictment of lobby and pressure politics, declared: "Contrary to tradition, against the public morals, and hostile to good government, the lobby has reached such a position that it threatens government itself. Its size, its power, it capacity for evil, its greed, trickery, deception, and fraud condemn it to the death it deserves."[4] The League of Women Voters, likewise accepting the view that pressure groups are evil and therefore to be shunned, announced in a recent manual: "The League of Women Voters cannot be characterized as a pressure group, unless it be as a pressure group for promoting an interest in government!"[5]

It is a matter of significance that almost every denunciation of pressure groups fails to include a definition and classification of the institution which is condemned. This failure to define the term under discussion seems to be based on the assumption that all pressure groups are inimical to the public welfare and seems to preclude the possibility of the existence of any

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[1] E. E. Schattschneider, *Party Government* (New York, 1942), p. 190.

[2] R. M. MacIver, "Pressures, Social," in the *Encyclopedia of the Social Sciences* (New York, 1934), Vol. 12, pp. 344–345.

[3] Kenneth G. Crawford, *The Pressure Boys* (New York, 1939), p. 38.

[4] *Cong. Rec.*, 74th Cong., 1st Sess., Vol. 79, Pt. 12 (Aug. 6–17, 1935), p. 12770.

[5] *The Program Explained* (National League of Women Voters, 1940), p. vi. See also Marguerite Wells, *A Portrait of the League of Women Voters* (National League of Women Voters, 1940), p. 14.

agencies which logically should be classed as pressure groups but which might also be viewed as beneficial elements in the democratic process. In the interest of scientific method, it should not be too much to ask that all academic discussion of pressure groups and lobbying be preceded by a definition and classification of the terms. What, then, is a pressure group? A pressure group is a non-partisan organization of a segment of the people formed to exert influence upon the legislature, the executive, or other governmental agency through public opinion for the enactment or the rejection of certain legislation, or for the adoption, modification, or discontinuance of a public policy. A pressure group is non-partisan; that is, it is not a political party, nor part of a political party. Nevertheless a pressure group has been known to exert influence at the polls by promoting the election or the defeat of certain candidates pledged to support or obstruct various public policies. If a pressure group offers candidates of its own at the polls, it becomes a political party. A pressure group may be large or small. It may represent rural or urban interests: it may be local, sectional, or national in scope. The objective sought may be merely the benefit of the particular group, as the enactment of the Soldiers' Bonus Bill sponsored in 1924 by the American Legion.

The objective may be entirely outside the particular interest of the group, such as the bitterly contested Aid to Dependent Children Bill passed by the Illinois General Assembly in 1941 under pressure of the League of Women Voters, the American Legion, and several other organizations. Better government may be the end sought, as exemplified by the number of civil service bills passed by state legislatures in the last decade under the urge of various groups, particularly the League of Women Voters. Whether the motive be private or public interest, a group seeking legislation or opposing legislation by the leverage of public opinion is a pressure group. The objective view toward pressure groups is entertained by a growing number of scholars. Among them, a leading authority, Peter H. Odegard, says: "It is through such organizations that the ordinary citizen finds his true representation. Public opinion in any other sense than organized group opinion is pretty much a phantom."[6] Pendleton Herring, in a pioneer study in this field, declares: "They represent a healthy democratic development. They rose in answer to certain needs. They have been forced to take the political structure as they found it. Entirely extralegal and non-constitutional, they have been maligned and misunderstood. They are part of our representative system. The groups must be understood and their place in government allotted, if not by actual legislation, then by general public realization of their significance."[7]

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[6] Peter H. Odegard, *The American Public Mind* (New York, 1930), p. 168.

[7] Pendleton Herring, *Group Representation Before Congress* (Baltimore, 1929), p. 268.

Pressure groups are but one means of formulating public sentiment. Political parties, newspapers, public opinion polls, the radio, public forums, debates, and lectures—all contribute to the molding of public opinion as an instrument for political action. It is futile to brand any one of these organs of public opinion as inherently evil. None of them is fundamentally bad, in spite of the invective that has assailed each of them. The test of their beneficial or evil characters must be made on the basis of their objectives and procedures, rather than on the basis of their existence in a democratic *milieu.* Indeed, in the evolution of the democratic process they have become one of the means of crystallizing public opinion and focusing this opinion upon the government. Inasmuch as the government in a democracy must rest upon the decision of the majority of the people, pragmatic agencies for the formulation and direction of public opinion are to be welcomed rather than discouraged.

Probably the least understood of the methods of formulating public opinion is the pressure group. Certainly its legitimacy is most frequently assailed. The political party has come to be recognized as an integral and necessary part of the machinery of democracy. Yet in the early days of the Republic the party was an outcast, and even President Washington flayed parties in his Farewell Address.[8] Until recent years, the party has been maligned as corrupt, as under the control of bosses and political machines, and as characterized by stuffed ballot-boxes and stolen elections. All this has been true, but it does not stamp the party as a vicious agency of government. Corruption may creep into any system, even into the halls of Congress or perchance the White House itself. Today the pressure group stands in the same position of ill repute as did the political party in the early years of the nation. It has become, however, a necessary part of the democratic machinery, and is to be considered as a healthy accompaniment of the two-party system.

The Political Party. Pressure groups are to be distinguished from political parties. The party, under our American system, is an organized unit seeking control of the government through the peaceful means of elections. Pressure groups, defined above as non-partisan organizations, seek to influence either or both political parties. But they remain outside of the party structure. Some such groups organize for a particular purpose and then dissolve when their objective has been reached, as did the League to Enforce Peace. This was organized in 1915 by William Howard Taft and others in order to create public opinion for a world league.[9] Its propaganda campaign practically ended with the drafting of the Covenant of the

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[8] *Annals of the Congress of the United States,* 4th Cong., 2nd Sess. (1796–1797), Vol. 6, p. 2874.

[9] Cf. *Development of the League of Nations Idea: Documents and Correspondence of Theodore Marburg* (New York, 1932), Vol. II, pp. 713–717.

League of Nations, albeit this was much too soon to accomplish the ratification of the Covenant. Other pressure groups are permanent organizations which create popular demands for particular bills affecting their interests, such as the Chamber of Commerce of the United States, the American Legion, and the League of Women Voters. Many of the established women's organizations are continually interested in legislation affecting women, children, or the home. The General Federation of Women's Clubs, the American Association of University Women, the Council of Women for Home Missions, the National Council of Jewish Women, and the National Congress of Parents and Teachers are some organizations of this character.

Much has been said in deprecation of the pressure group not entering the political arena and waging an open fight as a third or fourth party. Third parties arose with considerable frequency during the closing decades of the last century. This was the method adopted by the turbulent West to secure liberal, or even radical, legislation in Congress. But it was a slow, uncertain, and abortive procedure. If the new party polled a strong minority vote, a major party frequently adopted its most popular plank, or adopted it to such a degree as to destroy the third party following.[10] Hence new parties collapsed almost as suddenly as they appeared. After a series of such experiments, leaders of new parties perceived the advantage of pressure groups. Thus they could make use of the strength and organization of the major parties in order to advance their programs without the prodigious labor, expense, and continual failures of the independent party.[11]

The advantage of the latter system is at once apparent. Reformers seeking remedial legislation were not bound by any party line, but could enlist support from the ranks of either or both parties. Thus the Anti-Saloon League secured commitments from the candidates of both parties. The Prohibition party had one of the most progressive of the party platforms in the late nineteenth century. But its emphasis upon protection of labor, and upon anti-trust laws, was adopted by the other parties.[11a] This continual undermining of progressive measures of the third party, in addition to the difficulty of tearing voters away from the Grand Old Party at national elections, doomed such experiments to defeat. What the temperance people failed to achieve through a third party, they won by use of pressure. This is confirmed by the fact that, although the Eighteenth Amendment was adopted as a war measure, more than two-thirds of the states had already accepted prohibition, and largely because of pressure by the Anti-Saloon League.[12]

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[10] Fred E. Haynes, *Third Party Movements Since the Civil War* (Iowa City, 1916), pp. 1–6.

[11] Professor Odegard discusses the hazards involved in creating a new party. See *American Politics; A Study in Political Dynamics* (New York, 1938), pp. 790–794.

[11a] Compare the party platform of the Prohibition party in 1884 with the platform of the Democratic party in 1888. Art. 6 of the former declared against prison labor and cheap immigrant labor; the Democratic platform of 1888 devoted several paragraphs to the protection and betterment of labor. The Anti-Monopoly party of 1884 devoted nearly its entire platform to a denunciation of monopolies, while the Democratic and Republican platforms of 1888 opposed the unbridled expansion of the corporations. Kirk H. Porter (ed.), *National Party Platforms* (New York, 1924).

Pressure groups, of course, were not unknown in the nineteenth century. The most outstanding example in this period was Frances Willard and her legion of women known as the National Woman's Christian Temperance Union. They pressed legislatures in every state of the nation for laws on suffrage, temperance, and the protection of women. The suffrage associations, following the brilliant example of Miss Willard, adopted the same system about the beginning of the century. Even though women had not yet received the franchise, which is the very essence of pressure-power, they were able to secure sufficient votes by proxy to lend impetus and force to their pressure campaigns. One is inclined to say that it was the women who made popular the use of the pressure group. Their success in creating public opinion with which they wielded pressure upon legislators and administrators became a pattern for emulation. Henceforth the interest in third parties waned.

The Lobby. Pressure groups are to be distinguished likewise from the lobby. "Pressure" by a pressure group results from the organization of public opinion directed against some organ of government. The "lobby" is the point of attack upon one or more representatives or other officials by persons or interests without necessarily any regard to organized public opinion. The lobby is the direct effort to influence legislators by personal contact. It is difficult to find a writer who defines "lobby" apart from pressure groups. Some scholars adopt the inadequate definition laid down by Congress at the time of its "Lobby Investigation" in 1935, namely: "One who receives money for attempting to influence a member of Congress."[13] There are, however, two types of lobby: one that represents certain financial interests, as the sugar industries or the fruit-growers of California. The other kind of lobby represents a pressure group without a financial interest. Neither type of lobbying is essentially bad. Certainly industry is entitled to a hearing before legislation affecting it is passed. The reprehensible part of the process is the instances of bribery, intimidation, and undue influence. Also to be condemned is the unsocial policy sometimes pursued. There is an obligation incumbent upon every citizen that the welfare of the many shall not be sacrificed to the advantage of the few.

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[12] Prior to the Eighteenth Amendment, according to the statistics of the Anti-Saloon League, prohibition was in force in 90 per cent of all the townships and rural precincts of the nation, in 75 per cent of all the villages, and in 85 per cent of all the counties. Seventy per cent of the entire population of the nation lived in legislated-dry areas, and more than 95 per cent of the entire area of the nation was legally prohibition territory. *The Anti-Saloon League Year Book, 1922* (Westerville, Ohio, 1923), p. 5.

[13] See H. R. No. 6770. This bill was referred to the Judiciary Committee of the 74th Cong., 1st Sess. (1935), but was never reported back to the House.

Lobbyists may be paid or not paid. Some of the corporations pay high salaries to their lobbyists, while on the other hand much effective lobbying is carried on by zealous persons without remuneration. The Chamber of Commerce of the United States, one of the most powerful pressure groups, has long maintained a well paid representative at the capital.

Three essential differences mark the distinction between a pressure group and the lobby. First, the lobby is one of the methods employed by a pressure group. It is the point of contact between the pressure organization and the legislator or other government official. Second, the lobby is the formal method of representation employed by a pressure group to the members of the legislature or governmental agency. Third, the lobby merely makes use of, but does not create, the backing it possesses, whether financial or public opinion. Of course, a corporation may attempt to win public approval for a particular policy, as the utility companies have done in a number of states.[14] As a rule, however, corporations operate through political parties and the lobby, independently of public opinion. Also there are pressure groups which maintain no lobby, but depend entirely upon influencing their legislators through a mass of telegrams and letters. Thus a lobby may or may not have a pressure group supporting it; and a pressure group may or may not have a lobbyist representing it.

Propaganda. As has been pointed out, pressure groups frequently make use of the lobby as an instrument for influencing legislatures or governmental agencies. Likewise, pressure groups use propaganda as a means of influencing public opinion. But, like lobbyists, not all propagandists represent a pressure group. Propaganda has been defined as the manipulation of symbols for the influencing of public opinion. This is a broad interpretation which might well include teachers and lecturers. As propaganda is not education, the definition should be somewhat restricted. Therefore, propaganda is the manipulation of symbols for influencing public opinion to a particular point of view. Professor Childs defines propaganda as the propagation of ideas, principles, and doctrine, or to advance, further, promote, or disseminate ideas.[15]

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[14] James C. Bonbright, *Public Utilities and the National Power Policies* (New York, 1940), pp. 10–11, 71–72.

[15] Harwood L. Childs, *An Introduction to Public Opinion* (New York, 1940), p. 75; also Leonard W. Doob, *Propaganda; Its Psychology and Technique* (New York, 1935), pp. 71–77; Harold D. Lasswell, *Psychopathology and Politics* (Chicago,

Mr. William J. Cameron, of the Ford Sunday Evening Hour, is a good propagandist for the business interests of the nation. In his ten-minute chats, he has endeavored to present the service business has rendered society. He is creating good will for business, but he does not represent a pressure group. Father Coughlin was an excellent propagandist. Although a churchman, he did not in the beginning represent a pressure organization. His personal following came from the ranks of Catholics and Protestants alike. It is generally conceded that never in our history has the voice of a single person brought such a deluge of letters and telegrams upon congressmen as did Father Coughlin's opposition to American adherence to the World Court in 1935.[16] Over 200,000 telegrams were sent to senators during the debates, and these were largely inspired by the radio priest. Another influential propagandist was Charles A. Lindbergh. Before he joined the America First Committee in 1941, he spoke as an independent agent for the cause of an isolated America, and at that time probably did not represent any pressure group.

Propaganda, however, as used by a pressure group for the influencing of public opinion, entails such mediums as the newspaper, radio talks, mass meetings, circulation of pamphlets, booklets, telephone calls, and even teas and public receptions. There is nothing inherently evil in propaganda. Unethical tactics may be used. Propaganda which tells no untruths, makes no falsifications, but which is honest in presenting argument, is a wholesome, democratic procedure. It was charged in the newspapers that the America First Committee made falsifications in its propaganda, as in petitions sent to members of Congress which frequently bore the signatures of petitioners who later denied that they had given their assent to the petitions.[17] Such procedure, of course, is to be condemned, as is also subversive tactics.

Therefore, propaganda which is ethical is a legitimate instrument of the pressure group for formulating public opinion. Propaganda, moreover, as a means of informing the public upon particular issues, or arousing interest in debates upon current problems and governmental policies, is to be commended. Also, it is a legitimate procedure of the private citizen, as in the above illustrations. Propaganda is nothing especially new, although its popularity as an instrument of public policy is notable only in the last two decades. It has in fact been an American custom since the days when

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1930), pp. 188–190, and *Democracy Through Public Opinion* (Menasha, Wis., 1941), pp. 36–44.

[16] *New York Times* (Jan. 30, 1935), p. 1, col. 8. The National Union for Social Justice was incorporated by Father Coughlin in December, 1934; the tabloid paper called *Social Justice*, now under indictment before a federal grand jury for its subversive character, was established by him in March, 1936.

[17] See articles by Frank Smothers in the *Chicago Daily News*, Jan. 18, 20, 21, 22, Feb. 14, 15, 1941.

Benjamin Franklin sought and won the alliance of the French nation during the gloomiest period of the Revolution. This was not alone the result of brilliant diplomacy; it was also clever propaganda. Likewise, the *Federalist* papers were admittedly propaganda for the adoption of the federal Constitution. Some scholars have banted propaganda about as an unscrupulous method of unscrupulous people seeking an unworthy goal. This it may be, but propaganda is not inherently unscrupulous.

Education. Much of propaganda is education, yet the two cannot be spoken of synonymously. Education is a systematic training of the mind through study and instruction. It presupposes unbiased teaching, with a presentation of facts on both sides of debatable issues. Although propaganda is the chief instrument of pressure groups for molding public opinion, some groups also use education. The local chapters of the Committee to Defend America, while freely making use of propaganda, and even so designating it, also sponsored a truly remarkable educational program. For a period of nine months prior to Pearl Harbor, these local chapters held weekly lecture-forums, with an expert in some related field of public affairs giving the lecture. These speakers, often drawn from the faculties of universities, were told to exercise free speech, and to say whatever they liked. The program was designed to give the public in the community the advantage of expert comment on topics dealing with the crisis preceding the Axis attack upon us.

The League of Women Voters has utilized the instruments both of propaganda and of education. In the field of education, it has established study classes on major issues of the day which approximate the level of college work. When studying the question of the World Court several years ago, it turned for its information to such scholars as John Bassett Moore, Manley O. Hudson, Philip C. Jessup, and Quincy Wright. When the revision of the Neutrality Act of 1939 became a burning issue in Congress, the League organized study groups on this vital question, again drawing on outstanding scholars in the field for their knowledge. Not until its own organization has thus carefully studied an issue does the League place it upon the agenda for legislative action. After its policy has finally been adopted, as in the case of the World Court, and Neutrality questions, the League uses the tactics of propaganda, pressure, and lobbying to force governmental action. There is no other pressure group working as a national organization which so carefully educates its own constituency upon a measure before seeking public support of that measure.

Education, then, differs from propaganda. It uses a different technique, and is objective in purpose. Nevertheless it may also be used by pressure groups as an instrument for informing the public upon the facts of a given issue. It should be pointed out, however, that the method of education is rarely used by pressure groups, as it is too long-drawn-out a process and too cumbersome.

Pressure Groups as Part of the American System. The pressure group, while known to European democracies, is particularly an American institution. This is the result of a rigid constitution, and of the two-party system. The goverment is elected at stated intervals. But in a rapidly moving world the electorate cannot wait for the election cycle to swing round before informing its representatives of a shift in its sentiments. Senators elected in 1938 favoring an isolationist policy were in many instances out of step with their constituency by 1940. Burton K. Wheeler, although winning the election in Montana in 1938 by a large majority, probably could not have been elected on the same platform in 1940.[18] As new issues develop, the people, now alive and sensitive to the shifting times, want to be heard. The British system is in this respect somewhat more elastic. A government which does not keep pace with public opinion may be quickly deposed; and the relationship between people and government is more fluid.

Several political parties, furthermore, cannot possibly represent the public sentiment, even within their own ranks. Of course it would be fantastic to presume that the opinion of the nation can be classified under the leadership of two or three national parties. Thus there are many currents of public opinion upon many issues which may criss-cross party lines totally unrepresented. Major parties of necessity build platforms which will appeal to the great mass of voters, and hence they are cautious not to arouse antagonism. Therefore there can be little liberal leadership in the two dominant political parties. New ideas and reform measures cannot be adopted by them until pressure groups or independent parties have secured a degree of public support. Practically all of our liberal legislation of the past half-century has been introduced and fostered either by a minor party or by a pressure group. The eight-hour day, the income tax, workmen's compensation, sanitary factories, anti-trust laws, social security benefits, minimum wage laws, maximum hours per week, and woman suffrage have all been initiated and fostered first by a third party or a pressure organization.[19] The New Deal of President Roosevelt, the New Freedom of Woodrow Wilson, and the Square Deal of Theodore Roosevelt were not brought about by party liberalism, but came as the result of a mandate each leader felt he had from the people. These men of wide vision and dramatic imagination garnered the liberalism of many unsuccessful pressure groups into their own policy. The fact that such a broad political program was not in the party platform brought in each instance a storm of opposition from the conservative wing. These three leaders transcended party planks to sponsor measures long demanded in some form by the masses of the people. But only a courageous man and one in close touch with public opinion would dare so to defy the party creed.

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[18] See the *Chicago Times*, Sept. 11, 1941.

[19] Pendleton Herring, *The Politics of Democracy* (New York, 1940), pp. 179–186.

Parties, moreover, must so frame their tenets as to appeal to the New England industrialists, the Southern cotton-growers, the Western agriculturalists, and the Pacific Coast fruit-growers. Yet these areas all have special problems deserving recognition. Within these sections are various group interests ranging from welfare work to particularized special interest associations such as the Townsend pension plan, or the "ham and egg" movement in California. Thus there is stratification of group interest between the sections of the country and within the sections which cannot be represented by several political parties. This diversity of interests was found in the pre-war France and the pre-war Germany in the multi-party system. Such a procedure, however, has seldom permitted democracy to function smoothly, and when the stress of crisis came, this system in each of these countries crumbled easily.

Thus so far as the mechanics of our democracy go, the two-party system is sound and workable. It is not, however, readily responsive to shifting public opinion, nor widely representative of the cross-section of group interests. It is necessary, therefore, to have pressure groups as an accompaniment to the party system. Under the democratic process, legislatures must ever be responsive to the general will of the people. On the other hand, it will be admitted that the pressure groups introduce an element of irresponsibility into our political system that may be positively dangerous to representative government.

The necessity of pressure groups bespeaks a change in democracy itself. In the early days of the Republic, only about forty per cent of the people in New England could sign their names, and New England possessed the most progressive educational system in the land. Obviously, therefore, the mass of people were little interested in political issues. Furthermore, it was an agricultural society, so that political problems arose slowly and resolved themselves even more slowly. Issues remained in the platforms from election to election. But the situation in the twentieth century is entirely different. The agricultural society has been replaced by a highly industrialized life, and the present communication system has the speed of electricity. Within twenty-four hours after Germany marched into Poland, every village in America heard the news and was discussing its implications for this country. The radio and the widespread network of newspapers has brought world news almost instantaneously to every home in the land. Radio commentators have done much to dramatize the news making the masses aware of world affairs. As a result, there has been a quickening of the people's interest in government and politics.

Hence the representative type of government set up by the founding fathers has been somewhat outmoded by changing civilization. Public opinion in Washington's day included only a part of the people—the rest were too illiterate even to understand the issues. But today the great mass of the people are vitally interested in the processes of government. The people at long last have been educated for democracy, as Jefferson so wisely counselled they should be. Now they want to exercise some measure of direct control in governmental policy and procedure. Unorganized public opinion is ephemeral. To be effective, it must be integrated and organized. In recent years, the public opinion polls have been effective in reflecting public sentiment upon a variety of issues. Pressure groups, indirectly, often influence these polls. But the polls lack cohesion and force to promote a special policy.

Like good propaganda and bad propaganda, there are also good and bad pressure groups. A good pressure group presents its case to the public with candor and facts. It must be honest in its statements and ethical in its methods. In exerting pressure upon the legislators, it must be wholly upon the basis of the public opinion they represent. It is assumed, however, that this mobilized public opinion is based upon the voters and not on aliens, minors, and other groups denied the ballot. Bribes, threats, champagne parties, social influence, and other such means are to be decried as unethical and dishonest; likewise all subversive groups. An awakened and alert public must be relied upon for balance and control of these groups. The people will support those issues which they deem for the public good, and will be unmoved by the fantastic schemes of fanatics and radicals such as the "ham and egg" advocates. However, it must be admitted that a political charlatan may temporarily sway large groups of people, as did Dr. Francis Townsend and Huey Long. Each had his day, though short. But as the prairie lawyer pointedly expressed it, "you can't fool all of the people all of the time." Of course, the public must be constantly vigilant against the stampede of any irrational movements or irresponsible leaders.

A most outstanding pressure group of recent years is the League of Women Voters. Its educational program has been unsurpassed by that of any other organization. The timing of the transfer of an issue from the educational forum to the legislative has been most skillfully achieved. Accordingly, its success has brought it much prestige among legislators and the public at large. As a case study in pressure groups, the League would take high rank. It has set a pattern of high ethics, good public policies, and effective legislation.

Pressure groups, it may be concluded, are a part of our political system. They permit a new kind of participation of the people in legislation and administration. They give the people a continuing interest in government, not only at election time but between elections. They mold public opinion into a dynamic force for the shaping of governmental policy. Pressure groups are the modern expression of democracy by the people and for the people.

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Organization of the Executive Branch of the National Government of the United States: Changes between November 15, 1941, and March 31, 1942.[1] As in previous lists, mention is here confined generally to units specifically authorized by law or established by the President by executive order or reorganization plans under general authority vested in him. Changes in units created by heads of departments or independent establishments are excluded unless of major importance.

Authority for General Reorganization. Public Law 354, 77th Congress, approved December 18, 1941, authorizes the President to make redistribution of functions among executive agencies; the authority is limited to "matters relating to the conduct of the present war" and excludes any part of the General Accounting Office and its functions. This act is to be in force during the continuance of the present war and for six months thereafter, or until such earlier time as Congress by concurrent resolution or the President may designate. At the termination of the act all agencies will exercise the same functions as heretofore or as hereafter by law may be provided, any authorization of the President to the contrary notwithstanding.

Anthracite Coal Commission. Created by Public Law 355, 77th Congress, approved December 19, 1941, to determine the facts relating to and ways and means of improving economic conditions in the anthracite coal producing regions. The Commission consists of two members of the Senate to be appointed by the President of the Senate, two members of the House of Representatives to be appointed by the Speaker, and three persons to be appointed by the President (one each from the Bureau of Mines, the National Resources Planning Board, and the Interstate Commerce Commission); all members serve without additional compensation. The Commission will report to the President and Congress, and will cease to exist when its final report is submitted.

Army Reorganization. Made by Executive Order 9082 of February 28, 1942, effective March 9. The order provides for the following units under the Chief of Staff: (1) a ground force, under a Commanding General Army Ground Forces to which are transferred the coast artillery (except duties pertaining to procurement, storage, and issue), infantry, cavalry, and field artillery corps; (2) an air force, under a Commanding General Army Air Forces, to which are transferred the duties of the Commanding General, General Headquarters Air Force and of the Chief of the Air Corps; (3) a service of supply, under a Commanding General Service of Supply, to which are transferred the duties of the Chief of Coast Artillery relating to procurement, storage, and issue; (4) such overseas departments, task forces, base commands, defense commands, and other commands as the

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[1] Articles of this character appearing in the REVIEW prior to 1940 are listed on page 1044 of the issue for December, 1939. Later articles have appeared in the issues for June and October, 1940; February, June, and October, 1941; and February, 1942.

Secretary of War may find necessary. This order is to remain in effect during the war and for six months thereafter.

Army Specialist Corps. Created by Executive Order 9078 of February 26, 1942, as a part of the War Department for the purpose of obtaining the temporary services of qualified civilian employees for duties involving technical qualifications. The order is to remain in force during the continuance of the war and for six months thereafter.

Board of Economic Warfare. The name of the Economic Defense Board, created by Executive Order 8839 of July 30, 1941, is changed to Board of Economic Warfare by Executive Order 8982 of December 17, 1941.

Bureau of Customs, Treasury Department. By Executive Order 9083 of February 28, 1942, effective March 1, the functions relating to award of numbers to undocumented vessels are transferred from collectors of customs to the Commandant of the Coast Guard.

Bureau of Marine Inspection and Navigation. By Executive Order 9083 of February 28, 1942, effective March 1, the functions of the Bureau of Marine Inspection and Navigation of the Department of Commerce are divided between the Coast Guard (now under the Secretary of the Navy) and the Bureau of Customs of the Treasury Department.

Commission to Investigate Japanese Attack on Hawaii. Created by Executive Order 8983 of December 18, 1941, to make inquiry "whether any derelictions of duty or errors of judgment on the part of United States Army or Navy personnel contributed to such successes as were achieved by the enemy" on December 7, 1941. The Commission consisted of Associate Justice Owen J. Roberts; Admiral William H. Standley, retired; Rear Admiral Joseph M. Reeves, retired; Major General Frank R. McCoy, retired; and Brigadier General Joseph T. McNarney. Its report was published as Senate Document 159, 77th Congress, 2d session.

Department of Agriculture. By Memorandum 960 of December 13, 1941, effective December 15, 1941, the Secretary of Agriculture established eight group administrative offices through which the line agencies will be coördinated. As regards the units in each group, each administrator will direct and supervise activities, utilize personnel, funds, property, and services, and consolidate or integrate their administrative, technical, staff, and other services. The existing units assigned to three of the administrators are as follows:

- Agricultural Adjustment and Conservation Administrator
  - Agricultural Adjustment Administration
  - Soil Conservation Service
  - Federal Crop Insurance Corporation
  - Sugar Division
- Agricultural Marketing Administrator
  - Agricultural Marketing Service (except Division of Agricultural Statistics, which is placed under the Chief of the Bureau of Agricul-

    tural Economics, who is also designated as Associate Chief of the Agricultural Marketing Service)
  - Commodity Exchange Administration
  - Surplus Marketing Administration
- Agricultural Research Administrator
  - Bureau of Animal Industry
  - Bureau of Dairy Industry
  - Bureau of Plant Industry
  - Bureau of Agricultural Chemistry and Engineering
  - Bureau of Entomology and Plant Quarantine
  - Bureau of Home Economics
  - Office of Experiment Stations
  - Beltsville Research Center

Each of the remaining five group administrators has only one existing agency under his direction, the head of each existing agency being also group administrator. These are as follows:

- Farm Security Administration
- Commodity Credit Corporation
- Forest Service
- Farm Credit Administration
- Rural Electrification Administration

The remaining units of the department, being staff agencies, are not affected by the reorganization.

An Agricultural Defense Board is established, composed of the Agricultural Adjustment and Conservation Administrator, the Agricultural Marketing Administrator, the Agricultural Research Administrator, the Farm Security Administrator, the Rural Electrification Administrator, the Chief of the Forest Service, the President of the Commodity Credit Corporation, the Governor of the Farm Credit Administration, the Director of Agricultural Defense Relations, the Chief of the Bureau of Agricultural Economics, and the Director of Extension Work.

There is also created an Administrative Committee, consisting of the Solicitor, the Director of Personnel, and the Director of Finance, to determine the construction and application of the provisions of the memorandum.

The Agricultural Program Board and the Office of Director of Marketing are abolished.

By Executive Order 9069 of February 23, 1942, the President established three of the units listed above, namely, the Agricultural Adjustment and Conservation Administration, the Agricultural Marketing Administration, and the Agricultural Research Administration. Presumably presidential action was necessary in order to provide funds for the overhead in these units.

Emergency Court of Appeals. Created by the Emergency Price Control Act of 1942 (Public Law 421, 77th Congress), approved January 30, 1942, to consider appeals from the rulings of the Price Administrator. It consists of three or more judges to be designated by the Chief Justice of the United States from the judges of the district courts or circuit courts of appeals. The Chief Justice may designate additional judges or revoke previous designations. The Chief Justice may divide the court into divisions of three or more members, and any such division may render judgment as the judgment of the court. The court may hold sessions at such places as it may specify. All the provisions of the act creating the court will expire on June 30, 1943; they may be terminated earlier by a proclamation of the President, or by a concurrent resolution of both houses of Congress.

Federal Board of Surveys and Maps. Abolished by Executive Order 9094 of March 10, 1942, and its functions transferred to the Director of the Bureau of the Budget.

Federal Loan Agency. All functions of the Federal Loan Agency not transferred to the National Housing Agency by Executive Order 9070 of February 24, 1942, are transferred to the Department of Commerce by Executive Order 9071 of the same date. These include the duties of the Reconstruction Finance Corporation, Electric Home and Farm Authority, R. F. C. Mortgage Company, Federal National Mortgage Association, Disaster Loan Corporation, Export-Import Bank of Washington, Defense Plant Corporation, Rubber Reserve Company, Metals Reserve Company, Defense Supplies Corporation, and War Insurance Corporation.

The Federal Loan Agency is not formally abolished, but all its duties, records, and personnel are transferred to other units.

Interdepartmental Visa Review Committee. Created by Secretary of State on November 19, 1941, to render advisory opinions on the admission of aliens. Consists of one member each from State, War, and Navy Departments, the Federal Bureau of Investigation, and the Immigration and Naturalization Service.

Joint Mexican-United States Defense Commission. Created by Executive Order 9080 of February 27, 1942, to consider broad plans for the defense of Mexico and adjacent areas in the United States. The United States members are Lieutenant General Stanley D. Embick, U. S. Army, retired, and Vice Admiral Alfred W. Johnson, U. S. Navy, retired.

Maritime Commission. By Executive Order 9083 of February 28, 1942, effective March 1, the functions of the Maritime Commission relating to training of personnel for merchant ships are transferred to the Coast Guard.

National Housing Agency. Created by Executive Order 9070 of February 24, 1942, in order to consolidate activities relating to housing. The agency is under the direction of a National Housing Administrator. The three constituent units of the new agency and the former units transferred to them are as follows:

- Federal Housing Administration under a Federal Housing Commissioner
  - Duties of former unit transferred
    - Federal Housing Administration
- Federal Home Loan Bank Administration under a Federal Home Loan Bank Commissioner (formerly chairman of the Federal Home Loan Bank Board)
  - Duties of former units transferred from former Federal Loan Agency
    - Federal Home Loan Bank Board
    - Home Owners' Loan Corporation
    - Federal Savings and Loan Insurance Corporation
    - United States Housing Corporation
- Federal Public Housing Authority under a Federal Public Housing Commissioner (formerly Administrator of the United States Housing Authority)
  - Duties of former units transferred
    - United States Housing Authority
    - Defense Homes Corporation
    - Non-farm public housing from Farm Security Administration
    - Division of Defense Housing Coördination

The Central Housing Committee is abolished. The following offices are vacated at the expiration of 60 days and are to remain vacant as long as the order is in force: Directors and Officers of Defense Homes Corporation, the members of the Home Loan Bank Board except the chairman, the Directors of the Home Owners' Loan Corporation, and the Trustees of the Federal Savings and Loan Insurance Corporation.

National Patent Planning Commission. Created by Executive Order 8977 of December 12, 1941, to conduct a comprehensive survey of the patent system, with particular reference to the utilization of patents and expanded defense industrial facilities during normal times. The members of the Commission, who will serve without compensation, are appointed by the President.

National War Labor Board. Created in the Office for Emergency Management of the Executive Office of the President on January 12, 1942, by Executive Order 9017, for the adjustment of labor disputes which affect the prosecution of the war and which have been certified to it by the Secretary of Labor, although the Board, after consultation with the Secretary of Labor, may take jurisdiction of a dispute on its own motion. In determining a dispute, the Board may use mediation, voluntary arbitration, or arbitration under rules established by it. The Board is composed of twelve special commissioners appointed by the President; four of the members shall be representative of the public, four of the employees, and four of the employers. The President shall also appoint four alternate representatives of employees and four of employers, to serve in the absence of regular members representing these groups. The National Defense Mediation Board, established by Executive Order 8716 of March 19, 1941, is abolished.

Executive Order 9038 of January 24, 1942, provided for the appointment of associate members of the Board. Administrative Regulation No. 1 of the Board of January 29, 1942, provides that the chairman may assign any case to one or more associate members, who shall mediate as prescribed by the rules of the Board.

Navy Department. By Executive Order 9096 of March 12, 1942, the duties of the Commander in Chief, United States Fleet, and of the Chief of Naval Operations are devolved upon one officer, to have the title Commander in Chief, United States Fleet and Chief of Naval Operations.

Office of Alien Property Custodian. On February 12, 1942, the President by memorandum delegated to the Secretary of the Treasury control of foreign-owned property and the regulation of trading with the enemy. On March 11, 1942, by Executive Order 9095, these powers and others were delegated to the Alien Property Custodian, and the Office of Alien Property Custodian was created in the Office for Emergency Management of the Executive Office of the President.

Office of Censorship, Censorship Policy Board, and Censorship Operating Board. These three units were created by Executive Order 8985 of December 23, 1941. At the head of the Office of Censorship is a Director of Censorship, who shall cause to be censored "in his absolute discretion" all communications between the United States and any foreign country. The Censorship Policy Board will advise the Director of Censorship with respect to policy and the coördination and integration of the censorship. It consists of the Vice President, the Secretaries of the Treasury, War, and Navy, the Attorney General, the Postmaster General, the Director of the Office of Government Reports, and the Director of the Office of Facts and Figures; the Postmaster General is designated as chairman. The Censorship Operating Board will perform such duties in respect to operations as may be specified by the Director. It is to be established by the Director of Censorship, and will consist of the representatives of such agencies as the Director shall specify; each representative will be designated by the head of the agency he represents.

Office of Coördinator of Government Films. By letter of December 18, 1941, the President instructed the Director of the Office of Government Reports to act as Coördinator of Government Films for the duration of the war. His functions are to act as liaison officer of the government with private producers and distributors, to establish a clearance office through which all of the government's civilian films must clear, to plan such government motion picture production and distribution as is necessary to inform the public during the war-time crisis, and to consult with all government departments in connection with film production and distribution.

Office of Defense Transportation. Created by Executive Order 8990 of December 18, 1941, in the Office for Emergency Management of the Executive Office of the President to coördinate transportation policies, make studies of the adequacy of transportation facilities, and inform the President with respect to conditions. In the exercise of its functions, the Office of Defense Transportation is to be governed as to relative importance of deliveries required for defense by such instructions as may be issued by the Office of Production Management (later succeeded by the War Production Board) pursuant to the provision of Executive Order 8875 of August 28, 1941, relating to delegation and coördination of priority authority. Executive Order 8990 provides that in the Office of Defense Transportation there shall be a division of railway transport, of motor transport, of inland waterway transport, of coastwise and intercoastal transport, and such other operating and staff divisions as the Director may determine; the heads of the divisions mentioned are to be appointed by the Director, subject to the approval of the President. It is understood that the Transportation Division of the Advisory Commission of the Council of National Defense has been absorbed by the Office of Defense Transportation, but apparently no order to that effect has been made public.

Office of Director of Production, War Department. Created by the President January 16 to have charge of directing and expediting the production involved in the War Department's munitions program. It is under a Lieutenant General appointed to discharge these duties.

Office of Price Administration. Created as an independent establishment by the Emergency Price Control Act of 1942 (Public Law 421, 77th Congress), approved January 30, 1942, to regulate prices, rents, and market and renting practices. It is headed by an administrator appointed by the President by and with the advice and consent of the Senate. This office supersedes the former Office of Price Administration in the Office for Emergency Management, although the previous office is not specifically abolished by the statute. The President is authorized to transfer to any other agency any of the powers with respect to particular commodities conferred on the Office of Price Administration and to transfer to the Office of Price Administration any powers with respect to particular commodities relating to priorities or rationing conferred by law upon any other agency. However, certain powers may not be transferred to the Office of Price Administration, namely, any conferred by law upon the Secretary of Agriculture, and any relating to any agricultural commodities, except those relating to priorities or rationing, conferred by law upon any other agency. All powers under the act will expire on June 30, 1943; they may be terminated earlier by a proclamation of the President, or by a concurrent resolution of the two houses of Congress.

Petroleum Industry War Council. The Petroleum Industry Council for

National Defense was created by the Petroleum Coördinator for National Defense (Secretary of the Interior) on November 29, 1941, to advise the Coördinator with respect to any matter relating to the petroleum industry, to propose actions relating to coördination of the industry, and to make surveys and investigations. The Council is composed of 66 persons said to represent large and small interests, trade associations, and operating companies; it has an executive committee of 25 members. The president of the American Petroleum Institute has been elected chairman of the council and of the executive committee. On February 6, 1942, the name was changed to Petroleum Industry War Council.

State Department. Financial Division created by Departmental Order 1000 of November 24, 1941, to have responsibility in all matters of foreign policy in financial matters other than foreign funds control. Foreign Funds Control Division created by Departmental Order 1001 of November 24, 1941, to have responsibility of all foreign funds control matters. These divisions succeed the Foreign Funds and Financial Division; both are component parts of the Board of Economic Operations.

Virgin Island Homestead Projects. Transferred from the Department of the Interior to the Department of Agriculture by Public Law 372, 77th Congress. The Virgin Island Homestead Authority is abolished, and its functions are transferred to the Department of Agriculture. The Homestead Authority was established by the Federal Subsistence Homestead Corporation, which was created by order of the Secretary of the Interior of December 2, 1933, and which was transferred to the former Resettlement Administration by Executive Order 7041 of May 15, 1935.

War Insurance Corporation. Created by Reconstruction Finance Corporation on December 13, 1941, with a capital of $100,000,000 to provide reasonable protection against losses to property resulting from enemy attacks.

War Production Board. Created in the Office for Emergency Management of the Executive Office of the President by Executive Order 9024 of January 16, 1942. All the powers of the Board are vested in the chairman, who, with the advice and assistance of the members of the Board, shall exercise general direction over the war procurement and production program; shall determine the policies, plans, procedures, and methods of the several federal agencies relating to war procurement and production, including purchasing, contracting, specifications, construction, conversion, requisitioning, plant expansion and the financing thereof; shall perform the functions and exercise the authority of the Supply Priorities and Allocations Board established by Executive Order 8875 of August 28, 1941, namely, the determination of total requirements of materials and commodities needed for defense, civilian, and other purposes and the making of regulations governing allocations and priorities; and shall supervise the

Office of Production Management. All federal agencies shall comply with the policies in respect to war procurement and production as determined by the chairman. The Army and Navy Munitions Board is directed to report to the President through the chairman of the War Production Board. The Board, as originally constituted, consisted of a chairman, appointed by the President, the Secretaries of War and Navy, the Federal Loan Administrator, the Director General and the Associate Director General of the Office of Production Management, the Administrator of the Office of Price Administration, the chairman of the Board of Economic Warfare, and the special assistant to the President supervising the defense aid program. By Executive Order 9040 of January 24, 1942, the Lieutenant General in charge of War Department Production and the Director of the Labor Division of the War Production Board are made members vice the Director General and the Associate Director General of the Office of Production Management; this does not change the personnel of the board, as the new members are the persons who held the former offices in the Office of Production Management.

Executive Order 9024 abolished the Supply Priorities and Allocations Board, and Executive Order 9040 discontinued the Office of Production Management. All the functions of these two units are vested in the Chairman of the War Production Board, who may exercise his powers through such agencies and officers as he may determine. It is provided that "his decisions shall be final."

Under the authority conferred on him, the Chairman of the War Production Board, by Directive No. 1 of January 24, assigned to the Office of Price Administration authority with respect to rationing control over sales at retail or to the ultimate consumer, certain government agencies being excepted. Power conferred includes control over sale to any retailer who violates rationing regulations.

By Regulation 2 of January 26, the Director of Industry Operations is authorized to issue priority orders in place of the Director of Priorities of the Office of Production Management, and also to exercise the powers in relation to requisitioning formerly exercised by the Office of Production Management.

At the end of March, the units of the War Production Board were as follows:

Information Division
Legal Division
Progress Reporting Division
Statistics Division
Planning Board
Requirements Committee
Purchases Division

Production Division (includes Contract Distribution Division of the Office of Production Management)
Materials Division (includes Bureau of Conservation of the Office of Production Management)
Industry Operations Division
Labor Division
Civilian Supply Division

War Relocation Authority. Created in the office for Emergency Management of the Executive Office of the President by Executive Order 9102 of March 20, 1942, to arrange a program for the relocation, supervision, and maintenance of aliens removed from designated areas by the military authorities under the power conferred by Executive Order 9066 of February 19, 1942. The Authority is headed by a director appointed by the President. Within the Authority is the Relocation Work Corps, to be composed of persons removed from any areas under the orders cited. There is also within the Authority a Liaison Committee on War Relocation consisting of the Secretary of War, the Secretary of the Treasury, the Attorney General, the Secretary of Agriculture, the Secretary of Labor, the Federal Security Administrator, the Director of Civilian Defense, the Alien Property Custodian, or their deputies, and such other persons or agencies as the Director may designate. The Committee meets at the call of the Director and assists him in his duties.

War Shipping Administration. Created in the Office for Emergency Management of the Executive Office of the President by Executive Order 9054 of February 7, 1942, to direct operation of all vessels under control of the United States except combatant vessels and vessels engaged in coastwise transportation under the supervision of the Director of the Office of Defense Transportation, to allocate vessels for use by federal agencies and the governments of the United Nations, to provide marine war risk insurance as authorized by the Merchant Marine Act of 1936 (Title II, 49 Stat. 1985), to establish conditions for the receipt of priorities under Public Law 173, 77th Congress, approved July 14, 1941, to represent the United States in dealing with the shipping agencies of the nations allied with the United States, and to maintain current data on availability of shipping. All functions conferred by law on the Maritime Commission with respect to the activities mentioned are transferred to the new agency. The agency is under an administrator appointed by the President.

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LOCAL GOVERNMENT

Town and City Consolidation in Connecticut. Town and city consolidation in Connecticut serves purposes similar to those of city and county consolidation. Duplicating corporate bodies and officials are eliminated, and one government provides those services that are required only in urban areas as well as those required by both rural and urban areas. In addition, by the use of separate taxing districts a method has been developed whereby the people of the entire area pay for the general services while the people in the urban area do, and the people in the rural area do not, pay for the special urban services. Thus, it is possible to bring together a farming area and a city area under one government.

Consolidation has occurred in twenty-one towns.[1] In nine, city governments have been consolidated with town governments under a city form of government. In twelve, borough governments have been consolidated with town governments—in one under a borough form, in five under a city form, and in six under a town form of government. At the time of consolidation, in general the city or borough had a relatively large population but occupied only a small area within the town; the population of the town outside the city or borough was small, while the area was large. One-half of the cities or boroughs had a population of more than 10,000, while the population of the area outside was less than 2,500 in one-half of the towns. Two to four square miles was a typical area for the borough or city, while the size of the entire town ranged from five square miles to more than forty. However, there were important exceptions to the general rule. The cities and towns of Hartford and New London were coextensive at the time of consolidation, and in New Haven the city occupied more than one-half of the land area of the town. In Greenwich, the area of the borough was small, but so was the population, relatively speaking. There were 6,000 people in the borough and 27,000 outside; this, in fact, was one of the underlying reasons for consolidation, as will be explained later. Finally, it should be noted that consolidation was achieved in towns of small population as well as those of large population. The town of New Haven had a population of 100,000 at the time of consolidation, and Hartford more than 60,000. But the town of Ridgefield had a population of only 2,700 and the borough of only slightly more than 1,000. Nine towns had a population of less than 10,000 at the time of consolidation. Incidentally, five of the six towns with a town form of government after consolidation are small in population.

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[1] The names of the towns, the effective date of consolidation, the governments consolidated, and the form of government under which consolidation was accomplished (in italics) follow: 1874, New London, town and *city;* 1889, Bridgeport, town and *city;* 1893, Ansonia, town and borough, *city;* 1894, town of Derby and borough of Birmingham, *city* of Derby; 1895, Naugatuck, town and *borough;* 1896, Hartford, town and *city;* 1897, New Haven, town and *city;* 1902, Waterbury, town and *city;* 1906, New Britain, town and *city;* 1911, Bristol, town and borough, *city;* 1911, town of Orange and borough of West Haven, now *town* of West Haven; 1913, town of Norwalk and cities of Norwalk and South Norwalk, *city* of Norwalk; 1915, *town* of Winchester and borough of Winsted; 1917, town of Huntington and borough of Shelton, *city* of Shelton; 1921, Ridgefield, *town* and borough; 1922, Meriden, town and *city;* 1923, Torrington, town and borough, *city;* 1924, Middletown, town and *city;* 1932, Greenwich, *town* and borough; 1935, New Canaan, *town* and borough; 1941, Guilford, *town* and borough.

Inasmuch as counties are not significant in Connecticut, the important powers of local government are exercised by town, city, and borough governments. The town governments exercise powers of a general nature. Before consolidation, cities and boroughs were not concerned at all with education and welfare, and these two functions were largely carried on by the town. The recording of vital statistics and of deeds and mortgages was a town function. The cities and boroughs alone usually provided the special services of fire protection, sewage disposal, refuse collection and disposal, and street lighting. Highways and health are traditional town functions, but the cities and boroughs had come to have important powers in these fields. Every town had its "green," but the boroughs and cities had parks. The county sheriff and town constables, in declining tempo as time has gone on, and the state police in increasing tempo since its establishment in 1903, have furnished police protection, but the city and borough police departments had come to have the significant rôle in their own territories.

The important reasons for consolidation were the duplication of officials and the overlapping of functions. Each government had a set of officials for "general government" activities. The selectmen in the town, the mayor and council in the city, and the warden and burgesses in the borough were carrying on activities that were generally similar. There was always a town clerk and a borough or city clerk. A treasurer, a tax collector, and auditors existed in both governments. In addition to assessors and boards of tax review in the town governments, there were often such officials in the boroughs and cities. Elections were conducted by both governments. The city had a superintendent of streets and the town might have a superintendent of highways. Separate health officers existed in the borough or city and in the town. Overlapping had been forestalled in this field by a general law that town health officers would have territorial jurisdiction only in the area outside the borough or city. The most serious problems resulting from overlapping were in the field of highways. Difficulties arose over the question of how much of the town appropriations for highways should be spent within the city or borough, whether certain street work should be done by the town or borough or city officials, the use of town appropriations for street lights in rural areas after the borough or city provided its own street lights, and the lack of planning in street excavations. While the elimination of duplication and overlapping were the principal reasons for consolidation, there were in a few instances other minor reasons. In the five cases of town and borough governments which were consolidated as city governments, the change from borough to city government probably came to be the real reason in the minds of the people as agitation continued over many years and the difference between consolidation and this change became hazier. In Greenwich, the borough had come to be submerged in a surrounding built-up area. The town government had gone to the legislature to get special authority to provide urban services such as police and fire protection. The borough taxpayers were paying for their own services, and, in addition, as town taxpayers, for similar services in the outside territory. It was to eliminate this inequity that the borough was abolished, as well as to eliminate duplication and overlapping. In a few cases, the hope of partisan advantage may have been a factor.

In order to consolidate town and city governments, it was necessary to obtain special acts from the legislature.[2] The typical procedure included the following principal steps: The town meeting created a committee to draw up a consolidating bill or a complete charter; at another town meeting, the draft bill was discussed, amended, and voted upon; the bill was then introduced in the state legislature by the town's representatives or senator, and the state legislature enacted it; and, finally, a referendum was held in the town to determine whether the act should go into effect. However, not all of these steps were always taken. Also, there were a few instances in which the people never had an opportunity to express themselves except in the public hearing before the legislative committee on cities and boroughs.

Consolidation was accomplished only after considerable agitation and in the face of much opposition. Years of discussion often preceded success. The history of consolidation in Meriden and New Canaan was atypical only in that it perhaps extended over a longer period and was more eventful than in other places. Agitation for consolidation in Meriden began at least as early as 1892, but consolidation was not effected until 1922. The question of raising a committee to draw a consolidating charter was voted on in 1892, 1895, 1896, 1899, 1902, and 1905. Committees were created and reported to the town in 1892, 1896–97, 1899, and 1905–06. Special acts of the legislature were voted on in referenda in 1913, 1915, and 1921. New Canaan turned down legislative charters in 1921, 1925, and 1931, before voting favorably in 1935. Objection to consolidation came from various sources. The most general opposition arose from people outside the city or borough who feared that their taxes would be increased to pay for services that only the urban people would receive. There is also some evidence that the rural people feared an increase in the political power of the city people, whom they mistrusted. Selfish interests were in evidence also, particularly office-holders who would lose their jobs. In Greenwich, consolidation was opposed by people outside the borough who did not wish to pay for services they were getting, but that the taxpayers in the borough were providing. The *Hartford Courant*, in an editorial, opposed the elimination of a form of government that had nearly three centuries of tradition in Hartford. Opposition in some instances was not only to consolidation, but also to other features of the act before the people. Thus, in New Canaan the acts voted down in 1921 and 1925 provided for town manager and town council forms of government, respectively.

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[2] Every city and borough and several towns in Connecticut operate under special legislation.

What were the principal features of the consolidating acts? Before considering the provisions that were particularly related to consolidation, some features that were incidental to consolidation should be noted. It has already been pointed out that in five towns city governments were substituted for borough governments. This involved a complete revision of the governmental structure. In four of the six towns which retained town government, the opportunity was taken to obtain important structural changes. Even in several of the towns in which city and town were being joined, revised charters were adopted. It is doubtful whether many of the changes were improvements. Consolidating acts which provided for a council-manager, commission, or town-council form of government were not accepted by the people in referenda. The abandonment of town meetings in the fifteen towns which consolidated under city or borough forms of government was probably clear gain; but city or borough meetings were retained in a number of towns for voting the appropriations and levying taxes. In a few instances, commonly elected officials such as assessors and tax collectors were made appointive. In a number of cases, the concentration of the power to prepare the budget in a board of finance was offered by the proponents of consolidation as a distinct improvement over the budgeting system which it superseded; this was probably true, although it at the same time dispersed governmental authority. One town, while in the process of consolidation, eliminated a separate fire district, and another several school districts. Non-partisan elections and the initiative, referendum, and recall were introduced in two or three acts, although the most useful of these, non-partisan elections, has been repealed by the legislature.

Of the provisions that were directly related to consolidation, the elimination of one corporate body and of one set of officials was common to all. However, consolidation was not always complete. Duplicating treasurers, tax collectors, assessors, boards of tax review, auditors, and health officers were discarded in all cases. In the six towns in which boroughs were abolished and their functions assumed by the town governments, all duplication was eliminated. In the fifteen towns that adopted borough or city government, because of a provision in the state constitution that the town selectmen must decide on the qualifications of voters, these officials were retained to perform this one function. Their other powers, however, were transferred to the regular city or borough officials, with some minor exceptions and the important exception indicated below. In some cases, separate town and city clerks were continued. The most important exceptions to complete consolidation were in Middletown and Norwalk. In Middletown, the charter provided that the first selectman should be the executive in charge of the important functions of highways, in that part of the new city that had been in the town but outside the old city; and of welfare, in the entire town. In Norwalk, three districts with corporate powers and their own elected governing boards, clerks, and treasurers were created. Territorially, their jurisdiction was identical with that of the city of Norwalk, the city of South Norwalk, and the East Norwalk fire district, which had been abolished by the consolidation act. Functionally, their jurisdiction was much reduced. One district supplied water, one electricity, and one both; all three maintained libraries. The city government laid and collected taxes for the three districts.

One of the principal obstacles to consolidation was the objection by the taxpayers of the rural part of the town to taxation for services that would benefit only the residents of the urban area. To meet this objection, there was employed perhaps the most significant feature of the entire consolidation process. A separate taxing district which included only the area of the old borough or city was created. While the entire town as one taxing district was taxed for services that the town government had been rendering, the urban taxing district alone bore the cost of services that its residents alone were to receive.[3] Thus one government was to function at one and the same time as a town government and as a borough or city government. This rural-against-urban problem was met in another way in New Haven and Hartford;[4] property-owners in the rural territory were protected by a fixed, low, maximum tax rate. In only three instances were such separate taxing districts not employed. Both Ansonia and New London have areas of less than six square miles, and in New London the town and city were already coëxtensive in area. In Guilford, while the area of the town was very large, and of the borough small, the town government was already supplying fire protection, full-time policing, and street lighting to the outside territory. In Greenwich, the old borough was maintained as a separate taxing district only for the purpose of liquidating the debts that had been incurred before consolidation. In New Canaan, likewise, the old borough was to exist as a separate taxing district to liquidate debts if funds available were inadequate; however, the town was given the power of creating separate taxing districts, and one such district has been set up.

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[3] This feature of town and city consolidation in Connecticut appears to be similar to the new form of township government proposed by the Princeton Local Government Survey. Cf. W. S. Carpenter, *Problems in Service Levels* (Princeton, 1940), pp. 135–138.

[4] In Hartford, before consolidation certain property had been brought within the corporate limits of the city subject to a low maximum tax rate; this low rate was simply continued by the consolidating act.

While provision was being made for separate taxing districts, a few other features were included that applied to these separate districts. In a few towns, provision was made for assured representation of the rural area in town affairs. Thus, in Middletown, three of the nine members of the city council, elected at large, must reside in the area outside the urban taxing district. In a few cases, the law provided that certain ordinances should apply only in the urban area. In three instances in which general power was given to the voters to hold up certain actions of their officials until a referendum could be held, it was provided that the voters in the urban district alone might act upon matters that were of concern to them only.

Problems have arisen with respect to the allocation of costs of certain services to the special urban district and to the town as a whole. One fundamental contributing factor is the basic difficulty of determining what is a general service and what is a special service. Another fundamental contributing factor is the fact that in the years following consolidation there has been an increasing demand, not only by suburban residents, but even by farmers in the outside territory, for urban services such as police and fire protection and street lighting. There has been the greatest divergence in allocating the costs of particular services to the two districts. The charges for education, public welfare, collection of vital statistics, and the salaries of the selectmen have been invariably charged to the town as a whole, because unconsolidated cities and boroughs had never borne any share of their cost. Police departments, fire departments, street cleaning, sewage disposal, ash and garbage collection, street lighting, and ice and snow removal were usually confined to boroughs and cities before consolidation, and immediately after consolidation they were charged to the urban taxing district alone. In time, however, the residents of the outside territory came to desire one or more of these services. At first, the cost was usually so small that no question of payment was raised. But as the services increased, the problem became serious. It was often met by charging to the taxpayers of the entire town the cost of the services rendered the outside territory.[5]

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[5] This was given legislative approval in one instance. *Special Laws of Connecticut, 1921*, p. 756, sec. 3.

The greatest divergence arose in the case of those officials and services which had been common to both governments before consolidation, or existed only in the city or borough, but served both districts after consolidation. In the majority of the towns, the salaries of such officials as mayor, city councilmen, clerk, treasurer, assessors, members of the board of tax review, and tax collector were charged to the town as a whole. In one town, the salaries of the mayor, city council, and city clerk, which had existed only in the city government, were charged to the urban district; the salaries of the town clerk, assessor, and board of tax review, who had been town officials only, were charged to the entire town; and the salary of the treasurer, of which there had been two before consolidation, was divided evenly between the two tax districts. In three towns, the salaries and expenses of all the general officials were charged evenly to the two districts. And, in one town, apparently there was an effort to charge to the urban district that share of the salaries and expenses of the mayor, city council, clerk, assessors, auditors, attorney, and treasurer which was roughly proportionate to the services rendered by these various officials in the urban district. The cost of public health, by specific provisions of the consolidating acts in some instances, is usually borne by the town. But two of the towns that have a fifty-fifty division of general government costs have applied the same principle to health officials; and the town which attempts to determine proportionate benefits of general government officials does the same thing for health officials.

In dividing the costs for highways and streets, all of the above practices have apparently been applied as well as a few additional ones. It is difficult to ascertain precisely the basis of the allocation, but there is evidence of all of the following practices. In only a few towns is the whole cost of highways and streets borne by the entire town. Some of the activities are shared equally in some towns. The cost of some items, such as permanent pavements, which were constructed only by cities or boroughs before consolidation, is borne only by the urban district. Before consolidation, difficulties had arisen as to the amount of highway work to be done with town money within cities and boroughs, and the state legislature had stepped in by general and special laws to require a division; practices that had developed before consolidation have influenced the allocation after consolidation.

The paradox of consolidation is that, while it was the people of the outside territory who were most opposed to consolidation in the beginning, the device of separate taxing districts is now criticized chiefly because it is overly favorable to the outside territory. Responsible government officials are most often aroused by the practice of extending services to the outside territory which are financed only by the taxpayers of the special urban district. No direct evidence is available on the point, but it was hinted that residents of the outside territory are irritated if the fire or police departments, paid for only by the urban district, do not respond to their requests for assistance. The practice of charging the taxpayers of the urban district all of the cost of certain services rendered in the district, and then of taxing them again as town taxpayers for the cost of the same services rendered only in the outside territory, is hardly equitable.

The town in which the outside territory probably receives the most favorable treatment was not included in the analysis in the previous paragraphs. In the act consolidating the town and city governments of New Haven in 1897, the provision concerning taxation was that the outside territory should receive no services or improvements except those that had been or could have been provided by the town government before consolidation, and that this territory should be taxed no more than four mills on the dollar, exclusive of the school tax. The territory is provided with health and welfare services, streets, except street lighting, and the general services of government; but despite the ever-increasing costs of these services during the past forty years there has been no change in the law.

Charter provisions and practices in Middletown also give the people in the rural territory a particularly favored position. By unique provisions in the consolidating act, the taxpayers in the urban district must bear all of the costs of fire and police protection and parks in the urban district, and as town taxpayers part of the cost of these same services in the outside territory. In practice, this same principle has apparently been applied to some extent to highways and streets. In addition, Middletown is one of the places in which the urban district alone must pay one-half of general government and health department costs. The inequity of the division is magnified by the fact that substantial residential areas have developed in the outside territory until one-third of the taxable property of the town is located there.

Differences in charter provisions explain only a few of the differences in allocation of costs that have been cited in this and the previous paragraphs, and those not the important ones.[6] The division before consolida-

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[6] The following quotations are fairly typical of the two general types of provisions concerning the division of costs between the taxing districts:

"Sec. 5. Said city of Bridgeport is hereby divided into two districts. The first district shall comprise all the territory of said city, and the second district shall comprise all the territory that lay within the limits of said city as the same existed on the first day of January, 1889.

Sec. 6. All the inhabitants and property within the limits of the first district shall be liable to taxation to defray the burdens and expenses imposed upon said city by this act to the same extent as they would be liable if said burdens, expenses, duties, and powers had not been transferred from said town to said city, and in addition thereto for the expenses of the board of health of said city, and the expenses of, less tion and differing ideas as to what is of general and what of special benefit are more important as explanations. Political considerations have not been absent. It is difficult politically to deny services, even though someone else is paying the bill. There is no doubt that responsible officials have failed to correct inequitable divisions because of the possible political repercussions.

At the same time that these problems have developed, some constructive steps have been taken to solve them. In Naugatuck, the tax levies for the two districts have never been tied up with certain precise services. It has thus been easy, as more and more services have been extended in the outside territory, to adjust the tax levies accordingly. In the fiscal year 1905–06, the town levy was eight mills and the urban district levy seven mills on the dollar. The town levy has been gradually raised until in recent years it has been nineteen mills, while the urban district levy has been lowered to five mills. In some of the towns, responsible officials have succeeded in shifting a few items from the urban district to the entire town, when the services have been given to the outside territory. In a number of towns, the costs of fire and police protection and street lighting in the outside territory are now borne by the entire town, but this, of course, means that the urban taxpayers still pay twice. In a few instances, the towns have gone further in transferring the tax burden. In Meriden, for example, in 1941 the entire town paid for public liability insurance for streets, sidewalks and buildings, property damage insurance for streets and sidewalks, and snow and ice removal for the entire town and street lighting for the urban district, which in 1940 were paid for by the urban district alone. The shifts amounted to more than ten per cent of the total charge against the urban district. In a few cases, special legislation

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receipts from, criminal prosecutions and police protection outside of said second district, and truant officers, which expenses shall be ascertained and determined by the city auditor; and all other burdens and expenses of said city shall be met by taxation levied upon the inhabitants and property within the limits of the second district. . . ." *Ibid.*, 1889, p. 855.

"Sec. 6. The city of Meriden, for the purpose of taxation, is hereby divided into two districts. The first taxation district shall comprise all of the territory contained within the limits of the present city of Meriden. . . .

Sec. 7. A general tax shall be annually laid upon the inhabitants and property within said city, for the purpose of meeting the obligations and expenses of said city, but all money required to be expended for the care and maintenance of the water department and sewer and park systems and their extensions, the expense of the police and fire departments, the interest and sinking fund upon the debt of the first taxation district, and such other appropriations as are necessary for the special benefit of said first taxation district, or for any public work or purpose which is for the exclusive benefit or use of the inhabitants or property within the first taxation district, shall be raised by taxation upon the inhabitants and property within the said first taxation district only." *Ibid.*, 1921, p. 921.

was obtained from the legislature to authorize such shifts. In Waterbury, in 1931, for example, it was provided that the entire town should bear all of the costs of government except garbage collection. In a few cases, territorial rearrangement of the urban taxing district has been made. On at least seven occasions, the boundaries of the urban taxing districts in four towns were enlarged. In five of the consolidating acts, provision was made for the addition of territory to the urban district by action within the town alone. While in two or three instances this has occurred, the fact that a majority of the residents in the territory to be taken in must usually agree to the inclusion has militated against the use of this procedure. In two of the acts, provision was made for the creation of additional taxing districts, and three such districts have been created. One other additional district was set up by special legislation. This has made it possible for outside territory to get certain special services without any cost to the original urban taxing district. Finally, in three towns the separate taxing districts were eliminated entirely after they had been in existence for periods of eighteen, thirty-six, and forty-four years. Adding three towns that never had separate taxing districts, and three others that have them for only one service, there are now nine towns in which there is almost complete consolidation.

How successful has consolidation been? The elimination of duplicating governments has been clear gain. It is significant that no one suggests reëstablishing separate governments, while consolidation goes steadily forward. The device of separate taxing districts has, on the whole, worked well. In a majority of the towns, the problems mentioned above have either not arisen at all or have not been serious. In others, the problems are gradually being faced and solved. In some cases the separate taxing districts have been only a transitional step to complete consolidation. However, it is clear that it is impossible to define permanently what is a general local government function and what is a special urban function. And efforts to do so can fix by custom a tax distribution which may be used by vested interests to maintain tax inequities. The anticipation of social and economic changes when drawing charter provisions would eliminate some of the problems which have arisen. The fewest difficulties have come in those towns in which the practice has been to charge the entire town for services that benefit the outside territory in any way, and the urban district for those that are clearly of benefit only to the urban district. While there are only two acts providing for the creation of additional taxing districts, in these two towns such districts have been set up and have helped to solve the problem of special services for the outside territory. Town and city consolidation in Connecticut has been employed successfully to reduce the number of overlapping and duplicating governments, and special taxing districts have been the means of hurdling the obstacle of rural opposition; however, if charter provisions for special taxing districts are drawn without an eye to the future, they may raise new problems as well as solve old ones.

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State Supervision in New Jersey over Municipalities in Unsound Financial Condition. In 1938, New Jersey established a State Department of Local Government which, although not as far-reaching in the scope of its authority as its name suggests, possesses extensive and, in some respects unusual, powers of control over municipal finance.[1] The powers given to the Department then and subsequently include supervision of municipal accounting, fiscal administration, funding operations, budgeting, and auditing. Particular interest, however, in New Jersey and elsewhere has centered on the authority given the Department over municipalities in or approaching serious financial peril. Such municipalities were made subject to supervision administered with considerable discretion by the Department which, it was hoped, would not only check the course of localities headed for financial wreckage but also salvage and repair areas where the crash had already occurred. The experience of the Department thus far indicates that much has been accomplished on both scores, but also that there are clear limits to the possibility of restoring financial health to all of New Jersey's existing assortment of municipalities by virtue of the present treatments.

This need not be surprising in view of the fact that New Jersey's 566 municipalities are vexed with some of the worst and most stubborn causes of financial malady. The entire area of the state is divided into incorporated places, each of which must provide most of the local services. The reasons for financial distress range from impoverished agriculture to faulty metropolitan articulation. Some of the seashore resorts are in well-nigh hopeless condition, due to unjustified optimism of founders and promoters; abandoned real estate developments are common throughout the state; local planning and zoning are generally deficient; inter-governmental coördination is rudimentary. Places without any significant industry, commerce, agriculture, or taxable wealth eke out an existence as separate units striving to carry at least a minimum of services. In general, New Jersey's municipalities were created and continue to exist without adequate reference to taxpaying capacity, need for services, or consideration of optimum areas of administration.[2] Inevitably, therefore, the least fortunate of the state's municipalities have suffered serious financial enfeeblement.

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[1] S. D. Hoffman, "A State Department of Local Government," *National Municipal Review*, May, 1939, pp. 348–354.

[2] W. S. Carpenter, *Problems in Service Levels* (Princeton, 1940), pp. 84–85.

The special powers of the Department over financially backward municipalities are derived from two main sources. The first is the Fiscal Supervision Act of 1938,[3] one of the four local government acts of that year initiated by the Princeton Local Government Survey. This vested in the Department certain powers designed "to impose special restraints upon municipalities in, or in danger of falling into, unsound financial conditions." The second main source of the Department's authority in this sphere is the act of 1939 which gave to the Local Government Board of the Department the powers formerly held by the Municipal Finance Commission.[4] By the former act, the Department was given somewhat limited and essentially preventive powers, and from the latter it received a more comprehensive and powerful authority over municipalities where graver financial conditions prevailed.

An unusual feature of the Fiscal Supervision Act of 1938[5] is its definition of unsound municipal financial conditions. Whenever, at the end of the fiscal year and after notice and hearing by the Local Government Board of the Department, a municipality is found to fall within this definition, it is placed under special controls which are prescribed. These continue in effect until the conditions which led to supervision have been overcome and the municipality has operated during the preceding fiscal year without incurring a cash deficit.

Five tests of financial unsoundness are found in Sec. 3 of the act. The first is the existence of a default in the payment of interest or principal of bonded or bond anticipation obligations. Twenty-two of the 60 municipalities which have at one time or another been found subject to the act have been brought under its scope by this test, sometimes in conjunction with one or more of the other four tests. The second test, the existence of indebtedness to the state or county or to a school district or special district which has remained unpaid for two preceding years, has been found to apply to 18 municipalities. The third test affects municipalities which have had to include in both the preceding budget and the next regular budget an amount for "cash deficit of preceding year" in excess of five per cent of the total of taxes levied upon real and personal property. Six places have been brought under the act by this provision. The test which has applied to the largest number of municipalities is the fourth one, whereby if less than 50 per cent of the taxes levied on real and personal property in the year just closed and in the preceding year were actually collected during the year of levy, and if more than 25 per cent of the taxes levied in the preceding year were still uncollected at the end of the year just closed, a municipality must come under the Department's control. This has happened in forty-three municipalities. The final test deals with the amount required to be included in the next budget for liquidation of floating debt.[6] If this exceeds 25 per cent of the total of appropriations for operating purposes in the local budget for the year just closed, exclusive of dedicated revenue appropriations, the municipality is subject to Department supervision. Ten localities have been found affected by this provision.

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[3] Ch. 127, P.L. 1938. [4] Ch. 385, P.L. 1939.

[5] As amended by Ch. 95, P.L. 1941.

The invocation of the second broad range of the Local Government Department's special powers over financially delinquent municipalities, namely, those exercised by the Local Government Board of the Department acting as the successor of the Municipal Finance Commission, depends upon court action, which can be instigated in either of two ways. First, the holder of notes or bonds of a municipality which has been in default as to interest or principal for 60 days can petition a justice of the supreme court (a court of generally intermediate jurisdiction in New Jersey's complex and archaic court system) or, second, the municipality's governing body itself can file a resolution with such a justice to the effect that in spite of its endeavors the obligations cannot be met. If, in either case, the justice finds the facts to be correctly stated, an order is filed establishing the jurisdiction of the Local Government Board. This is to continue in effect, in whole or in part, until the gross and net debts of the municipality are within all statutory limits.

The powers of control acquired by the Department from its first major source of authority over municipalities in financial distress, that is, from the Fiscal Supervision Act of 1938, are, as has been said, somewhat limited and preventive in nature. They are primarily intended to be used to arrest the trend of municipalities which are approaching, or already in, grave difficulty, but which have not yet reached the most serious straits. Sec. 5 of the act provides for a limitation on debt which may be incurred. In general, no additional obligations, bonded or otherwise, are to be incurred by a municipality brought under the terms of the act, nor by a school district or any special district within such a municipality. However, this prohibition does not affect the power to issue strictly current obligations or to fund outstanding obligations in accordance with regular procedure provided by statute for all municipalities. Neither does it apply to obligations issued in order to comply with legally authorized orders of any state agency, nor to those issued, with the approval of the Local Government Board, in accordance with any law permitting borrowing to finance relief or for emergencies.

A limitation regarding appropriations is contained in Sec. 6. A municipality subject to the act may not, through its appropriations, cause an increase in the amount needed to be raised from property taxation for local purposes of more than five per cent over such amount for the year preceding the year when the municipality became subject to the act. The same limitation applies to appropriations for school and special district purposes within the municipality. By a recent amendment of this section,[7] the Local Government Board may authorize the adoption of a budget exceeding this limitation if it is found mandatory by law, or to protect public health, safety, morals, or welfare, or to prevent irreparable damage to public property, or for realization upon municipal assets. However, in such event, the Board is to fix the total of all appropriations, including the excess above the limitation of this section.

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[6] *Revised Statutes* 40: 2–21(d) and 40: 2–23(b).

An important authority is conveyed to the Commissioner of Local Government by Sec. 7. He "may order the governing body or an officer of a municipality subject to this Act to perform any duty prescribed by law whether or not a specific penalty or enforcement procedure is provided by such law." This enables the Department to insist upon the performance of regular statute-imposed duties affecting the financial condition of municipalities which might otherwise be ignored. An excellent example of the usefulness of Sec. 7 is found in the success of the Department in requiring annual tax sales. This is, by law,[8] a duty of all municipalities, but is widely ignored.

Sec. 8 of the act concerns the liquidation of floating debt, and it permits the Local Government Board to approve and supervise plans of liquidation which alter the normally required rate, the date on which liquidation is to be completed, and the payment of amounts due to other jurisdictions.

In addition to the foregoing powers, Secs. 9 and 10 give certain advisory powers and duties. The former authorizes, or, if the governing body of a municipality under the act makes a request, requires the Commissioner of Local Government to make a special analysis of the financial situation of a municipality. The latter instructs him to extend all possible consultation and assistance to municipalities under the act.

To meet the needs of municipalities under the Fiscal Supervision Act which are in more definitely serious condition, a recent act[9] authorizes the Local Government Board to use additional powers. These special powers may be invoked whenever a municipality has incurred a cash deficit in two of the last three years of not less than 10 per cent of its levy on real and personal property, and may continue in use until the municipality escapes from Fiscal Supervision Act control or has operated for three consecutive years without a cash deficit in excess of five per cent of its levy on real and personal property. One such power is that of supervision and control over the assessment, collection, and enforcement of property taxes and the administration of licences and other miscellaneous revenues. Another privilege of the Board is to require the preparation by a municipality of an active and an inactive assessment list in order that the latter may be deducted from the valuation on which state and county taxes are levied, and so that special attention may be given to its rehabilitation. The Board may also require the selection of a local administrator of finance, who is to work under the supervision of the Board, and who may be given authority over the administration and liquidation of local assets and liabilities, the enforcement of obligations, the investigation of possible economies through contractual agreements, and the exercise of the controllership function. In addition, the Board may relax the statutory requirement of provision for "deferred charges and statutory expenditures"[10] in a municipality's budget.

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[7] Ch. 95, P.L. 1941.

[8] *Revised Statutes* 54: 5-19.

[9] Ch. 75, P.L. 1941.

For the treatment of those municipalities which have, so to speak, already gone over the financial precipice, the powers of the Local Government Board of the Department derived from the former Municipal Finance Commission are available, although admittedly inadequate.[11] The powers thus acquired take precedence over any mandatory provisions of state law governing municipal budgets.[12]

An auditor appointed by the Local Government Board countersigns all municipal checks and warrants; he may be given power to recommend the annual budget, to review contracts, to make recommendations regarding all capital improvements, to attend and take part in the discussions of the governing body, and to investigate the affairs of any department, officer, or employee of the municipality. The Board also possesses power with respect to the appointment of special collectors of delinquent taxes and the compromising or adjustment of delinquent taxes and special assessments. A reassessment of taxable rateables can be required, and special powers are possessed concerning the installment payment of assessments for local improvements, and the sale, exchange, lease, or other disposition of tax titles or real estate owned by the municipality. Supervisory authority over the finances of school districts within defaulted municipalities is also given to the Board.

The entire process of funding or refunding of municipal indebtedness is under the Board's jurisdiction. In connection with the issuance of obligations for such purposes, the Board may require enforceable provisions to be included in the bond contract which impose an iron control upon the financial and administrative policies of a municipality.[13] No increases of local expenditures are permitted without consent of the Board; moreover, any failure of municipal officers or employees to perform duties laid down by any statute or local ordinance or regulation can be used by the Board as grounds for action leading to the removal or suspension of such persons and the appointment of other officials. If need be, the Board can carry out directly and in the name of a municipality any orders not complied with by the municipality.

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[10] *Revised Statutes* 40: 2–21(e).

[11] *Annual Report of the Local Government Board,* 1939, pp. 30–31.

[12] *Revised Statutes* 40: 2–4.

[13] *Revised Statutes* 52: 27–23.1, as amended by Ch. 202, P.L. 1938.

In practice, the Local Government Department has not chosen to follow a policy of using its various powers to the utmost. Rather, it has sought through individual study and investigation and by consultation and conference to obtain coöperation from municipal officials, citizen groups, state agencies, creditors, and other interested parties. This is, no doubt, the wisest course, as a harsher attitude would imperil not only the chances for constructive action, but perhaps also the very existence of the Department itself.

With respect to municipalities falling under the Fiscal Supervision Act, the Department has stressed the need for more efficient and vigorous tax collection and tax sales whenever the financial situation of the community warrants it. Unfortunately, this is not always the case, as some places either lack a genuine economic basis for separate existence or are saddled with tremendous debts and costs due to rash and unplanned expansion in former years. Of the 60 municipalities which have so far come within the terms of the act, 16 have been released primarily as a result of improved tax collection. This improvement is, however, a relative matter, and tax collections of such released municipalities seldom rise above 65 per cent. Other efforts made by the Department to improve the condition of its Fiscal Supervision Act charges include the encouraging of refunding operations where possible, the modification of the statute-decreed rate of liquidation of floating debt, the resisting of debt and appropriation increases, and general counsel and advice concerning sound economic and administrative practice. Altogether, 32 out of the 60 municipalities which have so far fallen under the terms of the act have been released after having overcome the conditions which brought them within the act. Five others, in particularly serious condition, have been transferred to tutelage under Municipal Finance Commission powers. Those which remain under the Fiscal Supervision Act are in relatively serious condition, and are unlikely soon to be released.

Municipalities which are held under Municipal Finance Commission powers now number 15 out of a total of 20 affected since such controls were first established in 1931. For the treatment of these places, particular reliance is rightly put, where possible, on favorable refunding. Plans have been put into operation in 13 of the localities, including the five which have been wholly or partially released; and efforts are being made to arrive at acceptable plans for the other seven municipalities. Both serial and term bonds with call provisions are utilized. Complete annual tax sales and foreclosure of tax title lien property are required. A representative of the Department is in close touch with the affairs of each place, and a careful examination of transactions and contractual obligations is made. The development of new rateables is encouraged, if deemed soundly conceived. Speaking generally, all phases of local governmental policy are scrutinized, and through persuasion and recommendation, if possible, economy is sought.

There is no doubt that the operations of the Department have aided its financially unsound municipal wards. Improved tax collections, lowered and refunded debts, and greater economy of operation are apparent, particularly where a major cause of difficulty had been administrative laxity and ineptness rather than inadequate economic and social foundations or crushingly excessive obligations. However, the present approach to the problem of the financially unsound municipality seems to rely too much upon more or less heroic efforts at rehabilitation within the existing unplanned and uncoördinated pattern of local governments. Such an approach inevitably fails in the case of those localities which are in extreme financial distress, and continued improvement elsewhere is uncertain. The Local Government Department is well aware of this, and has repeatedly recommended consolidation and regrouping of functions and areas. The state legislature should authorize the Department, working with the State Planning Board and civic and educational groups, to make studies and recommendations leading to a fundamental overhauling of service areas and tax structures. While the opposition to this in New Jersey, as elsewhere, is considerable, it may well be that with state constitutional reform in the air, and as a result of the focusing of attention on the problem of municipal financial collapse which has come from the work of the Department, such a step will be possible. If so, the importance and significance of the present program will have been greatly enhanced.

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A Decade of County Government Reorganization in North Dakota. No state better represents a period of local government reorganization than North Dakota. The 1941 legislative session climaxed for that state a decade of reorganization attempts to make adjustments in the institution of county government. The 1941 legislature added to consolidation and disorganization laws[1] enacted in previous legislative sessions three alternative forms of county government—the "County Manager Form,"[2] the

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[1] The 1941 legislature also amended the disorganization law.

[2] *Laws of North Dakota*, 1941, ch. 131.

"Short Form of County Managership,"[3] and the "County Consolidated Office Form."[4] As if these did not permit enough variation in reorganization, a Governmental Survey Commission[5] has been created to recommend to the next legislature any changes in either state or local government that may seem necessary.

For over a decade, a combination of citizen and interest groups, representing both the rural and urban approach, had been agitating for local government change. It was not that sentiment for the local government form as developed in Middle Western states was less strong than elsewhere, but the very pressure of economic circumstances, coupled with the expansion of local government services, made change inevitable. Social security problems created by a shifting and dependent population, changes in educational requirements, and land-use control practices presented challenges which the existing local institutions could only inadequately meet. It is, indeed, a tribute to the institution of local government that it maintained the degree of stability that it did during this period of economic dislocation. But at the same time it takes more than institutional tradition to service an army of unemployed, to manage vast estates of county tax-deeded lands, or to supervise public works construction projects—functions about which local governments two decades ago knew virtually nothing. Citizens of North Dakota were, during the thirties, gradually impressed with the fact that certain governmental readjustments had to be effected if the institutional governing machinery was to deal effectively with the social and economic problems which the last decade threw into bold relief.

As in most Midwestern states, a revision of the state constitution was necessary before any change could be made in local government structure. No fewer than six constitutional amendments were voted on during the past decade. The first was a proposal in 1930 to change the terms of state and county officers from two to four years. This was defeated by a vote of 109,060 to 84,849. At that time the depression had not yet so affected local government finances that people were willing to make changes in their institutional patterns.

But by 1933 tradition had given way to economic imperatives. Conscious of the excessive number and salary costs of local officials, an amendment to reduce the number of county officers was approved. Designed primarily for the small rural county, it combined the offices of clerk of district court and county judge in all counties of less than 15,000 population, and in counties of less than 6,000 added to this combination the office of register of deeds.

In the same year, the legislature enacted a county consolidation law. By a petition of 20 per cent of the legal voters, the petitioning county could be annexed to an adjoining county upon a favorable majority vote of the petitioning county and a 60 per cent favorable vote of the adjoining county. The 1937 legislature amended the procedure by requiring the petitioning county to favor the consolidation by a 60 per cent majority vote, and the 1939 legislature changed the law so as to require a petition to be presented by 30 per cent instead of 20 per cent of the voters.

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[3] *Ibid.*, ch. 132. [4] *Ibid.*, ch. 130. [5] *Ibid.*, ch. 216.

The feeling soon developed, however, that the 1933 amendment, which consolidated offices, was too broad and included relatively well-fixed counties for which the amendment was not designed. Abetted by pressure of individuals adversely affected by the change, the 1935 legislature drew up an amendment making the consolidation provisions apply to counties of 12,000 or less, and then only after each county to which the amendment applied had signified its approval by vote. This amendment was defeated in 1936, and again in 1938.[6]

Momentum for local government reorganization kept increasing. The 1937 legislature was the first to propose a county manager amendment, which would have allowed counties of 8,000 or less to adopt a manager plan by referendum. The defeat of the amendment by a close margin, 94,702 to 80,786, served merely to spur the proponents of local government reform to further effort.

The 1939 legislature not only enacted important legislation, but paved the way for major constitutional change. To the procedure for county consolidation was added the county disorganization law, enabling counties "to disorganize their present governments and become attached to adjoining counties for the performance of essential functions."[7] At the same time, the constitutional amendment was proposed which was to give the legislature the power to provide for optional forms of government for counties.

The historical background of the reorganization movement is significant because of the shift in emphasis during the years from mere structural-boundary change to the viewpoint that internal administrative reorganization was most essential. Despite the fact that the county consolidation law was a direct outgrowth of recommendations of the 1932 Governmental Survey Commission Study, and that the county boards had lobbied for both the consolidation and disorganization laws, no reduction in the number of counties was effected. Whatever other prejudice existed, the failure to adopt any changes under these measures indicated that public sentiment did not wish to abolish institutional forms prior to overhauling the administrative machine. Then, too, it was evident that mere changes in county lines or reduction in the number of county officers would at best result in only meager financial alleviations, and that the problem of adjusting the actual operation and functions of local government to meet the needs of a changed economy still persisted.

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[6] The 1938 amendment left out the provisions that the consolidation must be approved by the counties concerned and that county treasurers and sheriffs were to be limited to two consecutive two-year terms.

[7] Kenneth Wernimont, in *National Municipal Review*, Nov., 1939, pp. 769–772, 796.

The constitutional amendment met the issue squarely.[8] The legislature was given power to set up forms of government for counties in addition to the existing county board form. One of the forms created must, however, be the county manager plan. Once these forms were created, any county could submit one or more optional forms to a referendum. Though initiation procedure was to be legislatively determined, to insure democratic rights and to provide alternatives to methods dependent upon bureaucratic county "machines," the amendment stipulated that a petition of 15 per cent of the county's qualified electors should serve to bring the issue to a vote. If electorally approved by a majority of those voting, the new government form was to be adopted.

1941 Legislation. Optional county government forms were introduced as separate pieces of legislation and enacted as individual laws. Though some consideration was given to incorporating the legislation in one broad enabling act, this would have been complicated, and would have given the appearance of casting all counties into the same mold—which was undesirable since there were certain counties to which a particular law would best apply.

In setting up the three optional forms, the legislature made enactment procedure more difficult than the amendment had required. In both the County Manager and the Short Form of County Managership laws, submission of the optional plan to referendum is dependent upon a petition signed by not less than 35 per cent of the voters who voted in the last gubernatorial election, or upon a majority vote of the "full board of county commissioners." In the case of the County Consolidated Office law, the number of signatures on the petition is increased to 40 per cent. Notice of the referendum must be published once each week for four weeks before the date of election. Before any plan may be adopted, 55 per cent of the votes cast must favor it. The plan goes into effect on the date designated in the petition or resolution, except that this is to be not less than 30 days after election date. All elected officials whose offices are abolished are to hold their positions until the expiration of their term.

The County Manager Plan. First of the optional laws to be approved was the County Manager Plan. Patterned after the Model Act, this plan was enacted for counties large enough in both population and resources to organize their administrative set-up on a departmental basis. The law differs from the model example in that certain county officers are retained and that enactment procedure, as described above, is more difficult. The county still elects the sheriff, superintendent of schools, and the county judge; and all phases of county school administration remain with the superintendent of schools. The functions of the offices of constable and coroner are transferred to the sheriff's office, and those of the clerk of the district court and justices of the peace to the office of the county judge. The office of public administrator is abolished, and the judge is given power to appoint persons to handle matters connected with that office. With the exception of these changes, the law is identical with the Model Act.

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[8] *Laws of North Dakota,* 1939, ch. 112. (The amendment was ratified at the primary election of June, 1940.)

In common with the other optional forms, the manager plan makes no change in the legislative body of the county, the county commissioners. Depending upon the county, either three or five commissioners are to be elected from existing commissioner districts. Vacancies in the county board are to be filled temporarily by one of the county's remaining elected officers.

The Short Form of County Managership. The plan known as the Short Form of County Managership, a variation of the straight County Manager Plan, was designed for counties that wished to adopt a manager form of government without organizing the county on a departmental basis. For those counties where county employees are few and the main line functions are performed by one individual, an elaborate departmental organization would be a mere paper structure. Then, too, it would prove an obstruction to the manager who wished to organize the county's governmental program according to the staff and resources he possessed. In the Short Form of County Managership Plan, therefore, sections and phrases are omitted which deal with departments, and the manager is given, exclusive of functions belonging to the elected officers, power to organize structure and staff as he deems necessary.

This form also weakens the elective office of sheriff and gives the manager more discretion in the appointment of a state's attorney. The manager may employ a sheriff and state's attorney from an adjoining county to perform the functions that both counties require; and compensation for the joint office-holder is to be determined by the officer, the manager, and the commissioners of the two counties affected.

In all other respects, the short form manager plan is identical with the straight manager plan described above.

County Consolidated Office Form. Most novel of the plans created is the County Consolidated Office Form—"a hybrid plan" that embodies principles of both the county board and county commission forms of government, and yet is elastic enough to permit dual county management where adjoining counties are in a position to coöperate. Less revolutionary than the manager plan, this law was clearly a compromise between the traditional existing set-up and complete administrative reform. More power is given to the county commissioners over administration than they now possess, and certain offices and functions are consolidated.

In addition to the county commissioners, the following officers are retained: "One county auditor, who shall be *ex officio* county judge, *ex officio* register of deeds, and *ex officio* clerk of the district court; one state's attorney, one sheriff, one county treasurer, one county superintendent of schools, one coroner, four justices of the peace, and four constables."[9] These officers are to be appointed by the county board for a term of four years, except that treasurers and sheriffs may not hold office for two consecutive terms. The offices of public administrator and county surveyor are abolished.

At the discretion of the commissioners, the sheriff, the state's attorney, and the county superintendent of schools, "or any one or more such officers of an adjoining county," may be appointed to act as officer for both counties. The officer so appointed, in addition to the salary of his residence county, is to receive from the adjoining county a sum not less than one-half of the salary paid by his county of residence.

Most unique of the changes made are those applying to the office of county auditor. In addition to taking on judicial[10] and new clerical functions, that official is made "the chief administrative officer of the county." All duties of an administrative nature not specifically conferred upon other officers are to be delegated by the county commissioners to the county auditor.

In these three optional government forms, only the County Manager Form and Short Form of County Managership laws have sections dealing with retention of the plans. In both laws, the question of reverting to the old form may, after four years have elapsed, be raised by a petition of 35 per cent of the county electors. If 55 per cent of the votes cast are opposed to retaining the plan, the counties revert to the plan in force at the time when the new optional form was adopted. Provision is made under the manager law to enable county officers to file nominations which are to be voted upon at the same time that the election is held.

Governmental Reform Commission. As one surveys the opportunities now open to North Dakota counties to refurbish their governmental forms, it may well be contended that the list is still incomplete. It was with this in mind that the legislature created a Governmental Survey Commission to study further the organization and administration of state and local agencies. Composed of the governor and a member of each house, the commission is authorized to make any recommendations looking toward further simplification of the structures of government, consolidation of functional activities, and internal administrative reform. From the viewpoint of county and local government, this means that the commission may recommend any additional optional forms of government, or abolition or amendment of the plans already set up. Inasmuch as an executive secretary and an appropriation of $26,000 are provided for the commission, further reform may be witnessed in the next legislative session.

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[9] *Laws of North Dakota,* 1941, ch. 130, sec. 3.

[10] The North Dakota law has no special provisions for the officer who acts in the capacity of county judge. There is, however, some question whether the office of judge can be so combined with that of county auditor, since Art. 4, Sec. 110, of the constitution specifically provides for the position of county judge. This section was not included in the constitutional amendment.

Perspective. Many would argue that governmental reorganization is but a feeble solution for economic problems such as in the last decade have beset a state like North Dakota. To the indictment that reorganization is mere structural change, and at best a superficial economic sedative, is added the charge that the "philosophy of reorganization" puts a false emphasis upon the ability of a local government to effect readjustments within its economy. It is maintained that a local jurisdiction will have neither economic nor political independence so long as it is financially dependent upon a higher level of government. The argument is well bolstered by the example of the rural North Dakota county, where tax delinquent lands and stupendous grants of financial assistance are evidence of more than governmental and administrative deficiencies.

The only permanent solution for a county in this economic category, proponents of "fundamental economic analysis" maintain, is land-use change which will result in a redirection of the area's economy. This will inevitably necessitate changes in private land management practices, require new land control measures by the levels of government, and entail a new attitude toward the use of lands in public ownership. A land-use control policy will have to be formulated which will most wisely promote the utilization of the area's resources in relation to the national economy and the local social scene.

But before one can talk of a wise land-use policy and measures of land-use control, attention must inevitably be focussed upon the institutional structure that exists. The number of governmental units and special districts affected, the officers in charge, the police and eminent domain powers exercised, and the governmental services to be extended—all bear direct relationship to a sound land-management policy. And the same applies, in varying degree, whether the problem is one of reorganizing the tax system, changing road and school district organization, or redirecting public welfare services. Merely to create new agencies, to add new functions, and to devise new administrative procedures, without reorientation of the institutional and organizational framework, leads but to a frustrated reform.

This is not to deny that the type of government must stem from, and will inevitably be determined by, the economy of the area. For North Dakota, where in most sections direct relationship with the land is the all-important economic factor, the institution must be adjusted so as best to utilize the area's resources. But such readjustment must be related to the over-all governing process. For that reason, institutional changes are often necessary to balance properly the operation of the economic process.

Viewed from this framework of reference, government reorganization becomes more than mere super-structural change. The operation of federal and state activities at the local level, and the growth of new social responsibilities within the community area, force local jurisdictions to clothe themselves with adequate governmental powers. For the North Dakota county, the optional governing device may well prove the stepping stone to further reform.

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FOREIGN GOVERNMENT AND POLITICS

Freedom of Public Meeting in England Since 1914. To refute the maxim *silent leges inter arma* is one of the modern challenges to a democracy at war. It is usually recognized that when a state is at war many of the rights of personal liberty normally enjoyed by its citizens must be limited to prevent interference with the prosecution of hostilities. In international conflicts having an ideological basis, such limitations, if too severe, produce a somewhat embarrassing dilemma for a democratic state. The requirements of total war may necessitate at home some of the very objectionable features of government which are to be overthrown elsewhere; yet to be too lenient with dissident groups can well be disastrous. At all events, the government hesitates so to act as to invite its citizens to ask: "To what purpose is a war in defense of democracy if it begins by ending the very liberties which a people are asked to defend against external aggression?" Nevertheless, war conditions are not alone responsible for altered conceptions of personal rights. Internal developments in peace-time may also create a need for changes in such rules; the law cannot remain constant when the conditions upon which it is based are being transformed. Within a twenty-five-year period in English history, two major wars, as well as a series of domestic emergencies, have produced conditions sufficiently serious to arouse substantial sentiment favoring restrictions on civil liberties. At the same time, however, other equally determined groups, whose position is strengthened by the increased popularity of democratic ideals, have sought to combat such restrictions. The events of the period examined show the nature and the result of this conflict.

Freedom of public meeting in England, as in Continental countries, has long been viewed as a right necessary to full individual participation in political affairs, and, for all practical purposes, as indispensable to its twin, freedom of speech. For minority groups or others without the means of controlling, or access to, the press, the radio, and the cinema, it presents almost the sole method of public expression of opinion. Freedom of public meeting in England reached its apogee after the turn of the present century. The law protecting this liberty as it then existed—on the eve of the first World War—may be outlined briefly.

The matter rests, of course, upon the common law with an admixture of statutory provisions. Speaking strictly, such law knows no *right* of public meeting upon a public thoroughfare or common, but is, in effect, merely the freedom of individuals to assemble with others provided they do not infringe the law. Thus, the legality of any meeting depends upon the conditions under which it is held. The major limitations restricting the right originate in the necessity of maintaining public order. Riot, rout, and unlawful assembly, *i.e.*, a meeting at which a breach of the peace is likely to occur, are illegal under the common law. Statutes further prohibit seditious meetings, certain gatherings in the vicinity of the Houses of Parliament, unauthorized military drilling, and the obstruction of traffic, public buildings, and other places of public resort. In other cases, the presumption in pre-war days was in favor of the legality of assembly, and the greatest latitude was permitted to minority groups, whether or not their views met much public acceptance.[1]

The outbreak of war in 1914 found the government with no clear idea of what restraints upon civil rights future hostilities might require. To permit flexibility in the regulation of such matters, and to enable the government to act with dispatch as emergencies arose, Parliament authorized the executive, under the various Defense of the Realm Acts, to issue orders-in-council regulating the customary liberty of the subject with a view to promoting the public safety and the defense of the realm.[2] Under this authority, several regulations were issued affecting public meetings. Where there was reason to suspect that an assembly of persons would give rise to grave disorder, or cause undue demands upon the police or the military forces, or that any procession would conduce to a breach of the peace or promote disaffection, the Home Secretary or an official authorized by him could prohibit such a meeting or procession. If a meeting were held in contravention of such a prohibition, it became lawful to take such steps as were necessary to disperse it. The Home Secretary or the Army Council had power to prohibit the taking part in any exercise or drill of a military nature, or any organization for such a purpose, by persons other than members of the armed forces of the Crown. The military authorities were given power to authorize in writing a police constable or other person to attend any meeting or assembly at which an offense against the regulations might occur.[3]

The powers given the executive were used primarily to deal with anti-conscription and pacifist meetings. In January, 1916, the Home Secretary told the House of Commons that meetings which were limited to opposing the Military Service Bill, to advocating its repeal if enacted, or to opposing any extension of compulsory service, would not be liable to suppression. If there were any violence, however, or incitement to violence or to illegal action, or if the law were transgressed in any way, the object for which the meeting was held would not entitle its participants to any special consideration.[4]

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[1] General surveys of the law of public meeting may be found in A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, 9th ed. by E. C. S. Wade; A. B. Keith, *The Constitution of England from Queen Victoria to George VI*, Vol. II; E. C. S. Wade and G. G. Phillips, *Constitutional Law*, 2nd ed.

[2] 4 & 5 Geo. V, c. 29; 4 & 5 Geo. V, c. 63; 5 & 6 Geo. V, c. 8.

[3] *Defense of the Realm Manual* (1918), 91, 95, and 185.

[4] 78 H.C. Deb. 5s., 15.

Shortly before Easter Sunday, 1916, the Union of Democratic Control, the No-Conscription Fellowship, the Stop-the-War Committee, and a few other organizations planned to hold a demonstration in Trafalgar Square to advocate the opening of negotiations for peace. The Commissioner of Police determined that the meeting was likely to give rise to disorder, because of hostile opinion in London, and the Home Secretary issued an order prohibiting it. Two of the principal speakers at the proposed meeting were later arrested and imprisoned under the Military Service Act, although the prohibition was supposedly accepted without objection.[5] In October of the same year, the Home Secretary told the Commons that he had received applications from seven localities for power to prohibit meetings on the ground that serious disturbances were apprehended. He stated that he found in no case sufficient evidence to indicate that such would be the result, and that no orders were issued. He added that five of the meetings were not held anyway; the promoters either abandoned them or failed to obtain the use of a meeting place. Up to that time, the power to prohibit meetings was used only in the case of the proposed demonstration in Trafalgar Square.[6] In November, meetings were held in Cardiff and Merthyr Tydfil to propose an immediate peace, and without government interference, although the one at Cardiff was broken up by other persons.[7] On July 14, 1918, a pacifist demonstration was scheduled for Hyde Park. A demonstration of sympathy with France was also organized for the same day and place by the Alsace-Lorraine League. According to the Home Secretary, since the demonstration in honor of the French would draw large crowds of soldiers and others to the park that day, the pacifist meeting had to be prohibited as likely to cause grave disorder.[8] It will be seen from the few cases that arose that the government did not interfere extensively with public meetings during the first World War. Experience proved them not a threat to efficient prosecution of the war; besides, private individuals sometimes succeeded in preventing unpopular gatherings, after which no official action remained to be taken.

At the end of the war, the Defense of the Realm Acts were repealed. The transitional period from war-time to peace-time conditions confronted the government, however, with problems of unpredictable gravity, as labor groups threatened recourse to a general strike in an effort to improve their position. This possibility of domestic disturbances led to passage of the Emergency Powers Act, 1920, a permanent piece of legislation authorizing the government to proclaim an emergency and issue regulations in the event of any concerted action interfering with the

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[5] H. Samuel, "War and Liberty," *New Statesman*, Vol. 9, 224 (June 9, 1917); *Ibid.*, 253; 86 H.C. Deb. 5s., 299.

[6] 86 H.C. Deb. 5s., 300–301.

[7] H. Samuel, *loc. cit.*, 224.

[8] 108 H.C. Deb. 5s., 487.

"essentials of life" required by the community.[9] The act was first invoked during the coal strike of 1921, and regulations were issued providing for the prohibition of meetings likely to cause disorder.[10] No general prohibition of meetings resulted, however, and there seems to have been no interference with those peaceably held by trade unions.[11] With the outbreak of the general strike of 1926, the government again issued regulations under the Emergency Powers Act, and assumed powers almost identical with those exercised in 1921.[12] On this occasion the Home Secretary saw fit to prohibit all Communist meetings, on the ground that the party was conducting a campaign against settlement of the strike.[13] The lone Communist member of Parliament was even forbidden to address a meeting in his own constituency.[14] Yet in spite of the considerable powers enjoyed by the government to interfere with public meetings, and the existence of a hostile public attitude toward the strike, it was generally recognized that such legislation was to be applied only during genuine emergencies, and was not to be considered as enlarging the normal executive prerogative.

Depression conditions in 1932 placed an increasing strain on the right of public meeting. With the professed purpose of bringing the condition of the unemployed to public attention, the National Unemployed Workers' Movement, a Communist-inspired organization, began in September to organize "hunger marches" throughout the country. During the winter, numerous disorders occurred, followed by arrests, when police forbade such demonstrations as obstructive of traffic.[15] Several leaders of the movement were imprisoned for inciting the police to disaffection,[16] and two others, who, according to the police, proposed demonstrations likely to violate the Seditious Meetings Act, 1817, were sentenced to two months' imprisonment.[17]

Also arising out of the unrest of the times were two incidents resulting in decisions of the High Court of Justice which placed the control of public meetings increasingly within police discretion. At a meeting held in a private hall, but open to the public, to protest against passage of the Incitement to Disaffection Bill, several police officers insisted on entering and remaining during the proceedings. Although trial evidence showed that no criminal offense or disorder occurred, and that, except for being held under Communist auspices, the meeting was not different from others held for the same purpose, the court sustained the police contention that seditious speeches would have been made, and that breaches of the peace might have ensued, if the officers had not been present.[18] The second case involved the legality of a police order, the so-called "Trenchard Ban," issued under the authority of the Metropolitan Police Act, 1839, and forbidding all meetings in the vicinity of employment exchanges. A speaker who refused to obey this order was convicted of obstructing the police in the execution of their duty to prevent breaches of the peace, and the conviction was sustained on appeal to the High Court.[19] The effect of the two decisions was thus to give the police, first, the right to be present at any public meeting, and, second, the right to prohibit in advance any meeting or type of meetings at which they believed a breach of the peace might occur.

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[9] 10 & 11 Geo. V, c. 55.

[10] 140 H.C. Deb. 5s., 315–371.

[11] 140 H.C. Deb. 5s., 338.

[12] *Statutory Rules and Orders, 1926*, Emergency Regulations (No. 2).

[13] 199 H.C. Deb. 5s., 2087.

[14] 197 H.C. Deb. 5s., 1808.

[15] 269 H.C. Deb. 5s., 276–277.

[16] *London Times*, Nov. 2, 4, and 9, 1932.

[17] *Ibid.*, Dec. 19, 1932.

Fascist groups produced additional controversy over freedom of public meeting as early as 1925, when they began the practice of street demonstrations. In November of that year, a Labor member of the House of Commons called attention to the fact that "Fascist and quasi-military bodies meet regularly for drill and other military exercises," and that they march "through the streets armed, and in a general manner act provocatively toward all who hold opinions different from their own."[20] The government took no action against such groups; indeed, after 1932 a common complaint was that Fascist demonstrations—asserted by their critics to be much more disorderly than those of the Communists—were rarely interfered with by the police.[21] Steps were finally taken in November, 1934, when Sir Oswald Mosley, the leader of the British Union of Fascists, and three of his lieutenants were arrested for assault and riotous assembly following a meeting; but all were acquitted after trial, in spite of the questionable legality of some of their activities.[22] The steadily increasing resort to violence and the display of force in demonstrations and counter-demonstrations of these rival minority groups produced an intolerable situation in London. In October, 1936, the police banned all Fascist marches and meetings in the East End.[23] This step was followed by similar action in several other cities where such meetings had become synonymous with disorder.[24]

To curb extremist doctrines and militarized politics, and to salvage what was left of the old tradition of peaceable public meetings, the government, in November, 1936, introduced the Public Order Bill, in response to demands from all parties in Parliament. All seemed agreed that serious dangers lay in the methods which had been introduced into political life, and that the protection of customary civil liberties might require the sacrifice of a portion of them.[25] Accordingly, the act as passed banned the wearing of political uniforms in public and the organization of associations for the "use or display of physical force in promoting any political object," and contained provisions regulating public meetings. The police were authorized to prohibit all or any class of processions for a period not to exceed three months, and their authority to regulate processions was reaffirmed. The act further increased the punishment for using threatening, abusive, or insulting words or behavior with intent to provoke a breach of the peace.[26] Under this authority, the government thereupon banned all political meetings in the East End of London, renewing the restriction at intervals thereafter.[27] Supporting a statement that very few public meetings were interfered with during the first year in which the Public Order Act was in effect, the Home Secretary reported in December, 1937, that 3,094 Fascist meetings, 4,364 anti-Fascist meetings, and 4,553 meetings of other kinds were held in the metropolitan area. The police asked the promoters of only 20 meetings, out of the total of 12,011, to close down.[28] While the government was not severe in applying its powers to curb meetings, the prohibition of all meetings in the East End of London was criticized as restricting the activities of all political organizations, and not simply those whose gatherings inevitably led to disorder.

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[18] Thomas v. Sawkins [1935], 2 K.B. 249.

[19] Duncan v. Jones [1936], 1 K.B. 218. See 314 H.C. Deb. 5s., 1551–1552.

[20] 188 H.C. Deb. 5s., 25.

[21] See, *e.g.*, 273 H.C. Deb. 5s., 1272–1273; *London Times*, Sept. 30, 1933.

[22] *London Times*, Nov. 9, 14, 15, 16, and Dec. 19, 1934. Among those acquitted was William Joyce, later to become Berlin's Lord Haw-Haw.

[23] *Ibid.*, Oct. 5, 1936. [24] *Ibid.*. Oct. 14, 1936.

International problems rapidly overshadowed such domestic disturbances, and as England drew closer to war in the late summer of 1939, the government was determined not to find itself unprepared for eventualities which might require emergency powers. Protesting hope that "the final catastrophe" might still be averted, the Home Secretary came before the House of Commons on August 24 with a measure to give the government war-time powers to govern by decree.[29] Under the authority of the Emergency Powers (Defense) Act adopted that day, the government was empowered to issue regulations "necessary or expedient for securing the public safety, the defense of the realm, the maintenance of public order, and the efficient prosecution of any war"; and orders in council were first issued on August 25 to effect the act. Among other powers, the Home Secretary was enabled to prohibit or restrict (or to authorize a chief officer of police to do so) assemblies of persons and the use of any premises as places of public resort in order to minimize the risk of loss of life or of injuries as a result of war operations. Constables were authorized to use necessary force to secure compliance with their orders. Potential powers to restrict public meetings were authorized by making it an offense wilfully to obstruct any official or other authorized person in the performance of his functions in connection with the defense of the realm or the securing of public safety.[30]

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[25] 317 H.C. Deb. 5s., 1350–1351, 1442–1444, and 1454.

[26] 1 Edw. VIII & Geo. VI, c. 6.

[27] 325 H.C. Deb. 5s., 848; 326 H.C. Deb. 5s., 1794–1795.

[28] 330 H.C. Deb. 5s., 1283–1284.

[29] 351 H.C. Deb. 5s., 63–64.

Additional regulations were issued on September 1, 1939, giving war-time authority over public demonstrations, processions, and meetings. The Home Secretary was empowered to issue an order respecting any area directing that between specified hours no persons should be out of doors except under authority of a written permit. He also might prohibit the display in public of any flag, banner, or emblem likely to cause a disturbance of the public order or promote disaffection. In addition, that official could prohibit in any area public processions, or any class of them, if satisfied that they were likely to cause serious public disorder or promote disaffection; and he could delegate the power to prohibit meetings to any mayor, justice of the peace, or chief officer of police.[31]

These regulations were brought before the House of Commons for debate on October 31, 1939. While bitter criticism was directed at certain provisions allowing extensive governmental interference with personal liberty, and at others providing drastic potential powers to control the press, the regulations relating to public meetings were not found so objectionable.[32] Nevertheless, revised regulations were issued on November 23 to satisfy parliamentary criticisms, and as a result the Home Secretary could no longer delegate to local officials his power to ban meetings or processions likely to cause disorder, but was required to exercise such discretion personally.[33]

The limits to the freedom of public meeting during war-time continue to be tested by three groups—pacifists, Fascists, and Communists. Members of Parliament have frequently criticized some of the pacifist organizations, in particular the Peace Pledge Union, which seeks, its critics have asserted, to induce men to avoid military service by claiming to be conscientious objectors.[34] One such complaint was answered, and a demand for action against the organization was refused, when the Home Secretary stated in February, 1940: "The declared policy of this House is that there should not be any unnecessary interference with freedom, and my duty is to see whether any particular activity infringes the law."[35] Later, the Under-Secretary of State for War informed the House that there was no ground for apprehension that such meetings obstructed the mobilization of man-power or the determination of the people to prosecute the war effectively, and that "if any special measures should be called for I am sure that the House would desire to avoid so far as possible interference with the liberty of public meetings."[36] Meetings of pacifist organizations continue to be held, although on several occasions persons have been arrested for obstruction in connection with the distribution of pacifist literature, and others have been sentenced to imprisonment for indulging in insulting behavior with intent to provoke a breach of the peace.[37]

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[30] Emergency Powers (Defense) Act, 1939, 2 & 3 Geo. VI, c. 62; *Emergency Powers (Defense) Regulations, 1939.* S. R. & O., No. 927.

[31] *Ibid.*

[32] 352 H.C. Deb. 5s., 1827–1900.

[33] *Emergency Powers (Defense) Regulations, 1939.* S. R. & O., No. 1681.

[34] 357 H.C. Deb. 5s., 1505; 358 H.C. Deb. 5s., 1366.

[35] 357 H.C. Deb. 5s., 2245.

For a number of months after the war started, Fascist groups likewise enjoyed wide freedom to hold public meetings and to disseminate their literature.[38] Indeed, at the height of the battle for France, in May, 1940, police used truncheons on a hostile crowd which gathered at a meeting held by the Fascist candidate for the Middleton and Prestwich division by-election. Sir Oswald Mosley's attempt to speak was ineffective, even with a police escort.[39] For all practical purposes, the B.U.F. was dissolved as an organization when the Home Secretary, in July, 1940, issued an order under the defense regulations forbidding that organization to summon or advertise a meeting of its members, and prohibiting persons to attend such a meeting or to invite support for, or make any contribution to, the organization.[40]

No such general prohibition against Communist-sponsored meetings has as yet been undertaken, although certain meetings held in London fell under the ban issued in September, 1940, prohibiting all public processions of a political nature anywhere within the metropolitan police district.[41] A so-called "People's Congress," convoked in January, 1941, with Communist assistance and attended by some 2,000 delegates from leftist trade union locals, felt sufficiently secure to advocate the establishment of a "people's government" and making peace with the enemy.[42]

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[36] 358 H.C. Deb. 5s., 1209.

[37] *London Times,* March 4, 5, and 11, and June 3, 1940.

[38] 360 H.C. Deb. 5s., 354–355.

[39] *London Times,* May 20, 1940. One test of the actual Fascist sentiment in the division was afforded by the ensuing election. The Conservative candidate received 32,036 votes against 418 for his sole opponent, the Fascist candidate (*London Times,* May 23, 1940). Mosley and several dozen other persons were interned immediately after this election, under the defense regulations which authorized the "detention of members of organizations which have had associations with the enemy or are subject to foreign influence or control, and which may be used for purposes prejudicial to the national security." *London Times,* May 24 and 25, 1940.

[40] *Ibid.,* July 11, 1940. The Fascist newspaper, *Action,* suspended publication in June, 1940.

[41] *Ibid.,* Sept. 4, 1940.

[42] *New York Times,* Jan. 19, 1941. Shortly after this, the government suppressed the *Daily Worker,* the Communist newspaper, and the *Week,* a leftist weekly news-

It has been suggested that the government exercised restraint in dealing with the Communists as one aspect of its attempt to improve relations with Soviet Russia. Certainly, such a motive would be reasonable now that an Anglo-Soviet alliance has been contracted. Yet analogous reasoning offers no justification for the similar forbearance toward the Fascist groups which continued many months after the war began. It is not difficult to accept as sincere, in this connection, the Home Secretary's statement of the government's attitude toward dissident minorities: "The test of subversive activity is not the propagation of views which are out of harmony with the national war policy, but whether the liberty allowed by our laws is being abused by persons seeking to attain political ends by illegal and unconstitutional means."[43] A more reasonable attitude toward unpopular minorities who have not hesitated to impede the successful prosecution of a life-and-death struggle could hardly be expected. Even those who take the most pessimistic view of the chances for survival of customary civil liberties may well be encouraged by the profession of so generous an ideal, notwithstanding an occasional breach in its observance.

In sum, the events of the past twenty-five years have reduced the area of freedom permitted to public meetings. It is not very satisfying to explain that the major limitations have been brought about by activities of anti-democratic organizations which have introduced force and violence into contests for political power. But this is probably near the truth. New political methods having nothing in common with the English political system which the old rules of civil liberty sought to serve have required greater individual restriction. Not only do the police have larger discretion in banning meetings, and in sending observers to take evidence at those held, but they may entirely prohibit certain types of meetings. It has become the established practice in war or domestic emergency to place control of public meetings in the hands of the executive with broad decree-making powers. To be sure, such authority is exercised in full view of a vigilant Parliament,[44] and to date the government has never made the drastic use of its powers which the letter of the law would permit. Nevertheless, a certain uneasiness arises in some quarters from the fear that in time of possible domestic difficulty following the present war the government may make extreme use of its extensive authority. Whether the

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letter, for deliberately fostering a spirit of defeatism (*New York Times*, Jan. 23, 1941). This action was approved in the House of Commons by a vote of 297 to 11 (*New York Times*, Jan. 29, 1941).

[43] 358 H.C. Deb. 5s., 558.

[44] A recent illustration of the Commons' opportunity to air grievances is found in the debate on the annual renewal of the Emergency Powers (Defense) Act, 1939, held on July 23, 1941 (373 H.C. Deb. 5s., 941–1024). Criticisms were aimed almost exclusively at the procedures in detaining fifth columnists; no objections to the restrictions on public meetings were made.

earlier generous concessions to individual freedom can survive is one of the questions that await settlement in a post-war world.

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British By-Elections in War-Time. "The cardinal factors of British democracy," writes W. I. Jennings in *The British Constitution,* "are that the character of the British government depends essentially on the results of the last general election, that there must be a general election at least once every five years . . . and that the electors have a choice exercised freely and secretly between rival candidates advocating rival policies." For more than two years the British government has had to meet the challenge of a war crisis which threatens the very existence of British democracy. And war, it is commonplace to say, changes everything. The mandate, whatever it was, of the last general election was given in 1935, in days which, though they may still be dear to some, are certainly dead days beyond recall. Like the Parliament of 1911, the present Parliament has had its life prolonged beyond the maximum of five years. There have been no by-elections, with major rival candidates advocating rival policies; for, soon after the declaration of war, the chief whips of the three major political parties in the House of Commons signed an agreement providing for an electoral truce covering by-elections.

The agreement was formally arranged on September 26, 1939, at a time when four by-elections were pending. It reads: "We jointly agree, as representing the Conservative, Labour, and Liberal parties, as follows:—Not to nominate candidates for parliamentary vacancies that now exist, or may occur, against the candidate nominated by the party holding the seat at the time of the vacancy occurring. The agreement shall hold good during the War or until determined on notice given by any one of the three parties signatories hereto."

Clearly, this is an electoral truce. It was severely criticized, however, as being in effect a political truce. The *New Statesman and Nation,* for example, censured the Labour leadership for denying itself the opportunity of winning public opinion. Confining pressure to the House of Commons, it said, was mere "shadow boxing." In January, Mr. Attlee emphatically repeated that no political truce existed. No illusions about opposition sentiment could be entertained, he said. Socialist objectives had to be kept in sight and the Administration criticized—but without thereby benefiting Adolf Hitler. Mr. Attlee then pointed out the practical disadvantages which explained the Labour party's adhesion to the agreement.

This explanation was more fully expressed the following month by the party executive committee. An act of Parliament which prohibited the publishing of new registers of electors and additions to absent voters' lists during the war resulted practically in the disfranchisement of large groups of the working classes, which were contributing most of the men in the services. In addition, it was said, votes were lost because of evacuation and migration toward armament factories. Campaigners were occupied in overtime, A.R.P., and other war service. Printing costs were rising; few halls were available for meetings. And in case of air raids and blackouts, electioneering would be almost impossible.

Nevertheless criticism continued, the *New Statesman* calling the truce merely an immediate tactical advantage which sacrificed possible long-run gains. Meanwhile there was developing an uneasiness among Conservatives about the amount of Socialist propaganda. And on April 4, a Conservative party meeting was presented with a resolution declaring, in part, that "the present truce between political parties should not be confined to by-elections" and asking an end of "party feeling." Further proposals of this sort were obviated the following month with the advent of Winston Churchill and the formation of a new government. "There is now a truly National Government with the whole of the nation behind it," said *Labour* editorially. On May 21, Mr. Churchill could announce to Parliament that the £2,000 salary for the Opposition Leader would be held "in abeyance."

I

During the first two years of the truce, from September 26, 1939, through September 26, 1941, there was an unusually large number of by-elections.[1] Professor Pollock has reported an average of 16 or 17 a year between wars, with a maximum of 26 in 1937.[2] In 1940, however, there were 39 by-elections; and in the two years, 67. Part of the explanation lies in the causes of vacancies. In comparison with Pollock's 21-year period, the proportion due to resignation increased by one-half, partly, it appears, because of the war. More than half of the first dozen members to resign had for some time planned not to run again or had been ill, and it is not surprising that, once the war began and Parliament's life was extended, they should soon resign their seats.

An additional, voluntary resignation was that of the first M.P. since 1815 to be serving in the army and arrested by a court-martial. The war directly caused seven other vacancies. Seven Conservative members were killed while in active service. The number of by-elections would have been even larger had not a bill been passed in March, 1941, soon after the appointment of the new High Commissioner to Canada, permitting members sent abroad "for the duration" to retain their seats. Seats were retained also when the Prime Minister, under the Disqualification (Temporary Provisions) Act, certified to the House that certain members had been appointed to positions "in the public interest for . . . the prosecution of the present war."

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[1] *The London Times* is the main source.

[2] See J. K. Pollock, "British By-Elections Between the Wars," in this Review, Vol. 35, pp. 519–528 (June, 1941); and J. C. Sparks, "British By-Elections: What Do They Prove?," *ibid.*, Vol. 34, pp. 97–104 (Feb., 1940).

II

Of more interest are the significant features of the 22 by-elections in which contests were forced by 27 independent or minor party candidates. Almost half of these may be classified as non-Communist, non-Fascist anti-war candidates. Seven others represented the Communist party or the British Union (formerly "of Fascists"), and five offered belligerent formulas. The remaining six were various Independents. Of the 27, 14 lost their £150 deposits by failing to win one-eighth of the vote. Participation ranged from less than one-third to four-fifths, and averaged half of that in 1935.

On October 13, the first contest following the truce was forced by a young pacifist of the "Scottish Anti-War and No-Conscription League" in a clearly border-line constituency,[3] Clackmannon and East Stirlingshire, and under the most favorable conditions for the peace candidate. He had the additional support of the Peace Pledge Union, the Independent Labour party, and such I.L.P. speakers as Mr. Maxton and Mr. McGovern, both members of Parliament. The campaign was vigorous, and the war or peace issue was sharply drawn. Yet fewer than half of those voting in 1935 went to the polls. The opposition received only slightly more than 1,000 votes, less than the I.L.P. had polled in the last general election; whereas the official Labour candidate received more than Labour had secured in 1935, winning by about 16 to 1. Obviously, with the new member supported by the three major parties, no mandate can be defined. But also obvious is the lack of any surge of opposition to the national policy.

Almost two months later, the first Communist appeared alongside an I.L.P. candidate in the first (in Stretford division of Lancashire) of five three-cornered contests. Again the issue was sharp. The I.L.P. chairman urged "a heavy vote calling for the end of the National Government and its war"; and Mr. Chamberlain, in a letter, stressed the importance of a large majority as "an expression of the national unity." Yet, once the ballots were counted—only half as many as in 1935—to adjudge the election's significance and to assign victory were still difficult. The *Times'* only observation was that the Unionist "even improved on the

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[3] References to electoral history are based on elections since 1924 as reported in the *Constitutional Year Book, 1939.*

Unionist majority" of 1935. But who cay say how many of his supporters voted for party, how many for policy? And what can be inferred from abstentions? For he received, on the other hand, less than half of the total Conservative and Labour vote of 1935; and the I.L.P., contesting for the first time in what is a steady Conservative constituency, received more than one-seventh of the votes. The Communist polled less than six per cent of the total.

Two months passed quietly. And then, in an extraordinary period from February 12 to June, 1940, there was, on an average, one by-election every eight days; and 13 of the 17 were contested. We may, first, consider as a group five which were forced by non-Communist, non-Fascist anti-war candidates.

In Central Southwark on February 12, a "Stop the War" advocate received almost one-fifth of the vote, and a third candidate, a "National Independent," received more than one-sixth. But much more significant was the small total vote, little more than 8,000—less than one-fourth of the electorate. For this was the first by-election visibly affected by the war. About thirty per cent of the voters were absent, largely because of evacuation and active service. The very atmosphere, reported the *Times*, was strange. Electors kept asking why the truce, as they understood it, was being violated. Blackouts were frequent and meetings few.

Popular confusion about the truce was more justifiable early in March, when in a border-line constituency (Kettering in Northamptonshire) local Labour and Coöperative individuals nominated a candidate. Their action was repudiated by the Labour party's national executive, and the nominee ran with a "Workers' and Pensioners' Anti-War" label against the official National Conservative, a young second lieutenant who campaigned in uniform. Less than two-fifths of the electorate voted, and the opposition received one-fifth of the ballots. To the winner went fewer than either major candidate had won in 1935.

The next anti-war by-election occurred in North Battersea, a Labour stronghold, and was well described as Gilbertian. Apparently under Communist inspiration, the anti-war front arose at the last moment in the person of the young assistant secretary of the divisional Labour party, who only three days before nominations had signed his opponent's nomination papers. Communists flocked to the constituency to help solicit votes; and the election attracted attention, for in 1924 a Communist had succeeded in winning the seat. Yet, though about a third of the electors were absent, and though the vote was but a third that of 1935, only 791 of almost 11,000 voted "anti-war."

Two weeks later, in the Pollok division of Glasgow, the Labour party's traces were broken, not simply by individuals, but for the first time by a local Labour party. It repudiated the truce by nominating its chairman and was, in turn, repudiated by the national executive. The contested Unionist seat was considered the safest in Scotland, and as usual the opposition was defeated. But not only did the "unofficial Labourite" lose his deposit; there was also a large proportionate increase over 1935 in the Unionist vote. The next week, western Scotland (East Renfrew) saw another by-election, one forced by the I.L.P. The candidate, the sister of Mr. Maxton, spurned Communist coöperation because of the Finnish war, campaigned on a "stop the war" platform, and won 8,206, or one-fifth, of roughly 42,000 votes.

Four by-elections from February, 1940, to June were contested by the Communist party or the British Union. In the first, more than in any other, all the conditions were present for a genuine test of working-class opposition to the war. The constituency—the Silvertown division of West Ham, in East London—was not only a working-class, industrial area, but more than most it had come in daily contact with the enemy. It was heavily represented in the Army and Navy, and recently a hundred of its sailors had gone down in the *Rawalpindi*. In opposition to the Labourite were the Communist party and also the British Union. In spite of blackouts and other war-time limitations, all the concomitants of a vigorous campaign were early in evidence, and ideological lines were soon drawn. The Labour candidate maintained the issue to be democracy versus dictatorship, and victory over Hitler. The Communist, Harry Pollitt, demanded that the "imperialist war" be stopped. And the Fascist damned it as "a quarrel of British finance." On February 23, 15,460 voters went to the polls, 69 per cent of the 1935 total. Mr. Pollitt received 966 ballots and the Fascist candidate, 151. To consider the results as a referendum on various policies is futile. But as a reflection of the attitude of a certain class to a certain kind of opposition, the verdict was overwhelming.

Twice again the British Union forced contests. In the first, in a consistently Conservative borough (North-East Leeds), its candidate polled 722 of almost 25,000 votes. The second campaign, in an equally strong Conservative constituency (Middleton and Prestwich in Lancashire) was spectacular. Mr. Churchill, who had become prime minister only a few weeks before, called upon all the electors to indicate their support of the National Government by an unusual majority. In opposition, Sir Oswald Mosley himself appeared before several thousands at a meeting marked by "hecklers and flailing fists" and the throwing of stones. On May 22, more than 32,000 voters swamped the Fascist, who received 418 votes. (The British Union was outlawed on July 10.)

Early in June, in Bow and Bromley, of Poplar, the Communists were again active and contested the seat vacated by the death of the veteran George Lansbury. They received 506 of more than 12,000 votes, their lowest score both actually and proportionately during the two years.

In the four-month period under review, there were four other electoral challenges, which cannot be classified as either anti-war or, possibly, pseudo-anti-war. The first is in a class apart—the by-election for Cambridge University, in which an "Independent Conservative" defeated nine to five, in a small vote, an "Independent Progressive," who also supported the war but expressed a distrust of the Chamberlain government. Nor was the war an issue later in Argyllshire, contested by the Scottish Nationalist party. The winning candidate, maintaining that he was fighting for the rights of one small nation as Great Britain was fighting for those of many, received more than a third of what was the largest vote in all of the by-elections as compared with voting in 1935.[4] This was followed by a by-election notable in spite of the fact that the war was not an issue and that participation was proportionately the second smallest in the two-year period. For in North Newcastle, early in June, Unionist disunity resulted in victory, more than seven to three, for an unofficial Unionist candidate—the only electoral "upset" in two years of the truce. The winner was chairman of the Northern Area Conservative Association and had been denied the nomination when the official candidate, the son of the aged retiring member, was adopted by the divisional Conservative Association. The fourth challenge (in North Croydon), by a "freak" candidate who supported the Government but urged compulsory national service for men between eighteen and fifty-four, was deplored by Prime Minister Churchill as "a wholly irrelevant by-election." Participation was 29 per cent that of 1935, the lowest of all the by-elections; and the challenger received only one-eleventh of the vote.

This last by-election is of interest as heralding a number of contests beginning eleven months later and forced by advocates of a more vigorous war. In the long interval there were 28 by-elections but only two were contested, the first on December 7, 1940, in Northampton, by a local butcher who described himself as "a Christian Pacifist and Stop-the-War candidate." Mr. Churchill again deplored the forcing of a contest, but called upon the electors to grasp "a chance to show their earnest zeal." The pacifist was defeated by more than fourteen to one, and Churchill hailed the victory. However, only 35 per cent of the number voting in 1935 went to the polls, and the official candidate in this clearly doubtful constituency received almost one-third less than either major candidate in 1935. The second contest during the interval, in Dumbartonshire, was forced by the fourth and last Communist candidate during the two years and arose at the end of February, 1941, five weeks after the suppression of the *Daily Worker*. For the first time, a Communist deposit was saved, the candidate actually receiving 3,862 of almost 26,000 votes.

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[4] The Ministry of Mines allowed the candidates (who were permitted to enter a large, military "restricted area") extra petrol supplies because the constituency was a scattered one.

Early in May, there arose a challenge which had been rather common during the first World War. Of the nine by-elections in the five months before September 26, 1941, five were contested by candidates of the "Bomb Berlin" variety. The first, using this slogan, was nominated especially to oppose the pacifist secretary of the Peace Pledge Union. The by-election may have passed as simply another freakish expression, but it was infused with new life by Mr. Churchill, who in opposing its misleading use as a vehicle for minor protest sought to use it as a demonstration of confidence. In a letter to the official candidate, an active officer, he exhorted the electors not to stay home because the seat was safe, but to deliver an overwhelming majority showing "confidence in me and my colleagues from all political parties." "Every vote counts," he said, for "every enemy of Britain will look to the voting in King's Norton to see if there is any weakening in the national resolve." In response, more than 23,000 voters turned out, and each minor candidate received less than 1,700 ballots. The Conservative candidate's vote was large. But that it was no larger than the Conservative vote in 1935 may be due in part to the issuance of an election address by the local Labour party stating: "We are unable to support either of the candidates appearing before you." The party's national executive, denying that this attitude was "one of complete neutrality," as its spokesmen claimed, but rather a suggestion to vote against the official candidate, suspended the local party.

The next two by-elections marked the reappearance of Mr. Noel Pemberton-Billing, who had won a seat in the House of Commons in 1916 with the slogan "Bomb Berlin," this time with the slogan "Win the War in the Air." In both, Mr. Churchill appealed for an unusual majority, and during the second campaign he censured "political privateers who sail from constituency to constituency flying fantastic flags of their own designing." The first by-election was in a strongly Conservative district (Hornsey), and in spite of Sir Archibald Sinclair's urging of Liberals to vote for the official Unionist, only 21 per cent of the electorate went to the polls. Pemberton-Billing received 4,146 of the roughly 15,000 votes cast. A month later, in a somewhat doubtful district (Dudley), participation was closer to average for war-time, and he secured 4,869, or nearly half of roughly 11,000 votes.

These instances of a narrowing of the Government's majority were not isolated. For on September 25, in another Conservative district (Scarborough-Whitby), an "Independent Democrat," the editor of *Reveille*, a newspaper for the armed services, received 8,086 of roughly 20,000 votes. And on the next day (in The Wrekin, of Shropshire), Pemberton-Billing easily saved his deposit for the third time. Of almost 19,000 votes, he received 7,121 and, together with an "Independent," left the official opponent a majority of only 2,825. As the two-year period ended, both of these opposition candidates were planning to contest one of the four pending by-elections.

Considered as a group, and in view of their occurrence together, these five by-elections indicated, if not some restlessness and dissatisfaction with the conduct of the war, at least that the major parties would have to take more seriously the challenge of Independents and "freaks." The electoral results might be accounted for, according to the *Times*, by the "apathy" of constituencies, which resent contests during a truce and are not easily persuaded to vote, and by "the glibness of Independents in capitalizing every war-time grievance with not too much sense of responsibility." The Government, it was noted, was proceeding to remedy genuine grievances; and the major political parties were considering new methods of joint appeal to electors to record their support for Government candidates. At the same time, one must not overlook the possibility that, in conjunction with other signs, these last by-elections may really reflect, aside from the new Communist clamor,[5] a new aggressive sentiment contrary to much of the minor sentiment early in the war.

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[5] A fifth Communist anti-war candidate withdrew on June 22, "so that everybody could single-mindedly concentrate on achieving the victory of Britain and the Soviet Union over Fascism."

INTERNATIONAL AFFAIRS

The Trend of European Nationalism—the Language Aspect. In recent years, public opinion in the democratic countries has become increasingly aware of the dangers inherent in the unlimited competition of a host of rival nationalistic movements and sovereign nation-states. Having recognized it as a danger to be overcome, many liberal thinkers, like the experts of the Royal Institute of International Affairs, or Mr. Max Lerner,[1] are prone to assume that the trend toward nationalistic disintegration has already reached its peak. Many consequent suggestions of policy are based on the assumption that nationalism is declining, or about to decline.

The following inquiry into some of the evidence as to the actual direction of the general trend of European nationalism will be limited in two respects. First, it will be concerned at this stage with the surface trend alone, irrespective of its causes. Second, the evidence examined will be limited primarily to the language aspect of nationalism, that is, to the assimilation or diversification of national languages. It should be borne in mind, however, that the other major elements of nationality, such as political and educational institutions, literature, territory, group loyalties, and nationalistic movements, and frequently even sovereign states and customs areas, are all closely interconnected with the language factor. There is hardly a national language in all Europe for which there could not also be shown the existence of many of the other political and economic factors of nationality. In different nations, the proportions of these factors may vary; there will be border-line cases. But a view of the evidence over a longer period of years is likely to show how closely the language factor is linked with the rest of the picture.

I

Do Europe's nations tend to coalesce, to become one, and to accept one written language for their intercourse, administration, business, and literature? If so, and if in consequence we have been getting fewer and larger language areas in Europe, then the many political proposals for fewer and larger states would seem to have also the forces of nationalism itself on their side. Evidence of increasing willingness to accept economic competition and political rule from other language groups would point in the same direction. What are the facts?

Throughout European history, we find former common languages splitting up into increasingly different local dialects. But the speakers of these dialects accept economic coördination around the common centers of market, town, and capital city. They accept political subordination under a wider territorial administration, and social subordination under an upper class around a central élite. In the process they accept as their common standard language above their dialects the speech of the capital or of the economically central region, as spoken by the élite. Usually it is accepted at first in written intercourse; later, given sufficient intensity of education and daily communication, it becomes the standard for the daily speech of the nation.

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[1] *Nationalism; A Report by a Study Group of Members of the Royal Institute of International Affairs* (London, 1939), p. 336; Max Lerner, "The War as Revolution," *The Nation*, Vol. 151, pp. 68–71 (July 27, 1940).

Villages become subordinated to towns and states. Dialects become subordinated to standard languages. But what of the number of economic centers, what of the number of social and political élites, what of the number of standard languages themselves?

In the hundred years between 1800 and 1900, the number of full-fledged national languages in Europe increased from 16 to 30, that is, at a faster rate than in any of the preceding ten centuries.[2] And in the 37 years between 1900 and 1937, Europe's standard languages further multiplied to 53, adding almost as many to their number as in the entire thousand years that went before.[3]

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[2] In 950 A.D., there were in Europe six full-fledged written languages, i.e., languages with a grammar, literature, and some employment in business and public administration—Latin, Greek, Hebrew, Arabic, Anglo-Saxon, and Church Slavonic (Old Bulgarian). See G. Sarton, *Introduction to the History of Science* (Baltimore, 1927–1931), Vol. I. In 1250 A.D., two languages, Anglo-Saxon and Provençal, had become submerged, but there were 17 languages flourishing in Europe, as noted in Sarton's survey: Latin, Greek, Hebrew, Arabic, Church Slavonic, High German, Low German, French, Icelandic, Russian, Spanish, Catalan, Portuguese, Italian, Norwegian, Swedish, and Danish. Sarton, *op. cit.*, Vols. II and III. (" . . . a deeper study would introduce other languages; I speak only of those [outstanding] . . . by their exceptional vitality or by the creation of masterpieces," *ibid.*, Vol. II, p. 293). In 1800, five of the languages of 1250 had become submerged or relatively inactive: Hebrew, Arabic, Low German, Catalan, and Norwegian; and a survey published in 1809 showed only 16 languages flourishing in Europe: Greek, Church Slavonic, German, French, Icelandic, Russian, Spanish, Portuguese, Italian, Swedish, Danish, English, Dutch, Polish, Magyar, and Turkish (Osmanli). J. Ch. Adelung—J. S. Vater, *Mithridates* (Berlin, 1809). In 1900, a century later, 15 of the above-mentioned languages were flourishing, Church Slavonic being the only one to have dropped out; and to their number had been added Welsh, Flemish, Norwegian (Riksmaal and Landsmaal), Finnish, Rumanian, Czech, Slovak, Serbo-Croatian (a common literary standard language with two sharply different alphabets, traditions, literatures, and loyalties), Slovene, Bulgarian, Ukrainian, Yiddish, Esthonian, and Latvian. See F. N. Finck, *Die Sprachstämme des Erdkreises* (Leipzig, 1911); A. Meillet, *Les Langues du Monde* (Paris, 1925); W. L. Graff, *Language and Languages* (New York and London, 1932); L. Bloomfield, *Language* (New York, 1933); and works on the individual languages.

[3] In 1937, all of the thirty national languages of 1900 were flourishing, and still more were joining their number with new literatures and educational or political institutions or movements: Lithuanian, Irish, Scottish Gaelic, Basque, Breton,

The 15 nations that awakened to national language and literature between 1800 and 1900 comprise today a population of more than 80 millions.[4] Eleven of them have since attained, at one time or another, some form of statehood: Bulgarians, Czechs, Croats, Esthonians, Finns, Latvians, Norwegians, Rumanians, Serbs, Slovaks, and Ukrainians. Two others, the Slovenes and the Flemings, have reached a degree of political autonomy; and the last two of the 15, the Welsh in Great Britain and the Yiddish-speaking Jews in the U. S. S. R., have considerable autonomy in matters of language and education. Among all of these the sense of group loyalty has found expression in nationalistic or patriotic movements.

The 23 smaller nations which awakened between 1900 and 1937 contain today a population of more than 30 millions.[5] Seven of these reached some form of statehood between 1900 and 1941: Albanians, Irish, Byelo-Russians, Karelians, Moldavians—the three last-named only as "Union Republics" within the federal framework of the U. S. S. R., whose constitution grants them, theoretically, the "right to secede"—and the Georgians and Lithuanians, who each formed a sovereign state before becoming Soviet "Union Republics." Of the 13 remaining nationalities, nine have formed administrative units on a national, linguistic basis with various degrees of political self-government within the European part of the U. S. S. R.: the Bashkirs, Chuvashs, Cheremiss, Mordvins, Ossetes, Samoyeds, Syryens, Tartars, and Votiaks.[6] The process was not dissimilar in the rest of Europe; Lusatian Serbs enjoyed some autonomy in education in their own language in Germany from 1918 to 1937; Gaelic-speaking Scotsmen found increased rights for their language in education as well as a number of administrative concessions to the special problems and to the separate identity of Scotland stressed by the Scottish nationalists; Basques and Catalans ob-

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Catalan, Rheto-Romance, Lusatian Serb, Albanian, Hebrew (modern), Karelian, Byelo-Russian, Moldavian, Georgian, Ossete, Bashkir, Cheremiss, Chuvash, Mordvin, Samoyede, Syryen (Komi), Tartar, and Votiak. Sources as above. The data for 1900 and 1937 have been checked with the survey of Biblical translations in E. M. North, *The Book of a Thousand Tongues* (New York and London, 1938). Nationalities in the European part of the U. S. S. R. of 1937 are listed in accordance with the language map of Europe by A. Drexel and R. Wimpissinger in their *Atlas Linguisticus* (Innsbruck, 1934). Exclusion of the territory of European Russia from consideration would not materially change the picture of the basic trend.

[As philologists disagree in many cases as to what to count as standard languages and what as dialects, the different surveys have been taken in conjunction and their testimony verified, wherever possible, against evidence from sources within the disputed language group.]

[4] Sources as above, and current statistics.

[5] Sources as above.

[6] See note 3, second paragraph, above. On the Moldavian language and nationality, see *Eleven Union Socialist Soviet Republics* (Moscow, 1938), p. 33 (in Russian); and H. Kloss, "Sprachtabellen," in *Vierteljahresschrift für Politik und Geschichte*, Vol. 1 (7) (Berlin, 1929), pp. 111–112.

tained full political autonomy under the Spanish Republic and played an important part in the Spanish civil war; Rheto-Romans found their ancient language introduced on a basis of full equality into the administration of Switzerland; Hebrew-speaking Jews found a large measure of economic and political autonomy in Palestine, and many of them believe that this will eventually change the position of the "Jewish nationality" all over Europe; a million Bretons in France saw the revival of their old language with a new nationalistic movement in their midst.

Most of these nationalistic movements, new states, and new autonomous districts have grown up from already existing language groups, among people who were already speaking some old vernacular in their families and in their simple, mostly rural, life. These now, on becoming commercialized, industrialized, and literate, are elevating their idiom to the status of a written standard language with its own grammar, literature, and claims for social recognition. If this process should continue, we may expect, with the spread of literacy and industrialization, the rise of nationalistic movements all over the world. In order to visualize the possible scope of this process alone, one should recall the estimate that there are more than 2,700 spoken idioms or dialects in the world,[7] while not more than half of mankind is as yet literate.[8]

II

If this were the entire story of the rise of modern nationalism, we could then at least also expect that this increase of new nationalistic movements would eventually stop, first in Europe and later in the rest of the world, as the supply of historically inherited language groups became exhausted. Actually, however, the rise of standard national languages is a more complex process, and no simple limitation upon the number of existing dialects can be hoped for.

First of all, a standard language is not merely a standardized single local idiom. It may be regarded rather as a combination of several idioms in that it is usually a language accepted as a common standard by the speakers of several different dialects. It may be a combination of several different elements of speech, such as the Greek Koiné. It may be the language of the capital or central city or central region around which some social, economic, cultural, and often, though not always, political integration has taken place, and where an élite has been assembled, whose composition is to some extent reflected in the language.[9] English, the language of London; Danish, the language of Copenhagen; French, the language of Paris, the Ile de France, and the Champagne; standard Italian, the language of educated Florence—all these show that the national standard language is itself the result of economic, cultural, and political coöperation and affiliation.

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[7] "The actual number of languages recently computed by officers of the French Academy is put at 2,796." *World Almanac,* since 1929. A more recent survey by E. Kieckers lists almost 3,000 living languages. *Die Sprachstämme der Erde* (Heidelberg, 1931), pp. 237–257.

[8] F. C. Laubach, *Toward a Literate World* (Columbia University Press, 1938); quoted in North, *op. cit.,* p. 18, note 3.

These elements of affiliation, in their turn, are subject to change. In the twelfth and thirteenth centuries, the Netherlands were united with Cologne and Lower Germany by a chain of wholly fluid transitions in their written languages. Netherlands writers, such as Jacob van Maerlant and Heinrich von Veldeke, have their place in both Dutch and German literature. In the sixteenth century, the Netherlands broke away from the rest of the German dialect area, and the speech of Brabant was regarded as standard. In the seventeenth century, with the decline of Flanders and the rise of the northern provinces, the speech of Amsterdam became the standard for what is today modern Dutch. At present, the speakers of the Lower Saxon,Plattdeutsch vernacular of Gelderland, of Frisian in Friesland, and of genuine Lower Frankish, Dutch dialects are all united in using Dutch as the language of school and church and as the medium of their common national allegiance. On the other hand, the continuous area of Germanic dialects, mutually intelligible from village to village without a break, is now split into three standard languages, Flemish,[10] Dutch, and German, with another offshoot in a fourth national language, Afrikaans, across the sea. It was not at first these languages that made history; it was history that made these languages.

The acceptance of a common national language contains an element of choice. Macedonians, speaking an intermediate range of dialects, may equally well accept integration into the Serb or into the Bulgarian nation, or else hold out for a nationhood of their own.[11] Slovaks may break away from their common written language with the Czechs, as they did in

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[9] While standard languages are evolved in the capital cities, they are not necessarily dominated by the original dialect of the metropolitan region. Rather, they will be based on the speech of the new urban population, and particularly of its most important social group, even if its members have been recruited from all over the country. O. Jespersen, *Mankind, Nation, and Individual from a Linguistic Point of View* (Oslo and Cambridge, Mass., 1925), p. 65.

[10] "Gradually the language of the Dutch Republic began to be considered in Belgium as that of the enemy and the heretic, and an opposition was created between Dutch and Flemish. . . ." G. Duflou, "The Flemish Language," in *Encyclopedia Britannica* (14th ed., 1937), Vol. IX, p. 371.

[11] ". . . the movement for an autonomous Macedonia . . . tends to wean away from the main national body one-fifth of the total Bulgarian population and set it up as a separate nation." S. Christowe, in *An American Symposium on the Macedonian Problem* (Indianapolis, Ind., 1941), p. 21.

1845; later, they may join them in a state based on the idea of a common Czechoslovak nationality, as they did in 1918; and again later their nationalists may protest against attempts of any of their own Slovak countrymen to reduce the relatively small grammatical differences between the two mutually intelligible languages, as they did in the disputes about the new Slovak grammar in 1932.[12]

There is, then, room for new changes and new combinations among the local idioms and ways of speech integrated into the national languages of any given time. Serb and Croat, Russian and Ukrainian, Danish and Norwegian, may be brought closer together or forced farther apart. Provençal, Frisian, Plattdeutsch, and Schwyzerdütsch have all had their literary renaissance in the nineteenth century and form today potential instruments for future new political alignments in case such should come to be desired by strong groups among the populations involved. Thus the elevation of Schwyzerdütsch to a political language of equal rank with standard German was actually suggested in March, 1938, in the Swiss legislature. In considering the possibilities of future national differentiation, we should bear in mind, therefore, not only the present number of dialects and of their present groupings under national standard languages, but also their possible new combinations in times of exceptional change and stress.

III

In the second place, we find a new development since the middle of the nineteenth century, and particularly strongly in the twentieth: a tendency to increase deliberately the differences between kindred, and particularly between neighboring, languages. The rise of the Slavic written languages and literatures in the first half of the nineteenth century had been characterized by the ideas, if not of Pan-Slavism, at any rate of "Slavic mutuality," of a broad give-and-take among Slavic languages and literatures. Less than a century later, in 1937, the Czech philologist, M. Weingart, found that the old give-and-take of the romantic period had been replaced by "an evident distaste for the influence of the other Slavic literary language, particularly of the neighboring one. Thus the Ukrainian language is struggling against Polonisms as well as Russisms, Slovene against Serbo-Croatisms, and . . . Slovak against Bohemisms, not infrequently only imaginary ones. There is in this a visible turning away from the ideas of romanticism and the direct opposite of what then was demanded by Jan Kollar."[13]

Under favorable circumstances, the new trend has gone even farther. Considerable population groups begin here and there to mark themselves off more sharply from their neighbors by accepting *new languages* which they themselves never spoke, but which are derived from some language used at one time by some of their actual or reputed ancestors. Scottish and Irish nationalists struggling with their unfamiliar varieties of modern Gaelic;[14] young Zionist Jews diligently learning modern Hebrew; Norwegian patriots changing their historical written language, Dano-Norwegian, for a mixture of Norse peasant dialects, Landsmaal or Folkemaal[15] —all these are examples of a new trend to increase consciously, indeed even to *create*, new linguistic differences by an act of the political will. It can be done; the languages of whole communities, in time of whole nations, can be changed to suit the desire for nationalistic separation. That seems to be the evidence of Palestine, Norway, and Ireland.

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[12] C. A. Macartney, *Hungary and Her Successors* (London, 1937), pp. 88, 127.

[13] M. Weingart *et al.*, *Slovanské spisovné jazyky v době přítomné* (Prague, 1937), p. 5.

The development of modern philology and modern education has made it possible to revive, modernize, and utilize any ancient language sufficiently known to history, if it should so suit any group's desire for separate identity. At the same time, new ways of speech are formed through the changing and splitting up of old languages into new accents and idioms under the influence of time and geographic separation. With the possibility of changing alignments and combinations between all of these elements, the national languages of today appear not only as a cause, but also as a result, of national differentiation. So far as the linguistic factor is concerned, the nationalistic disintegration of mankind may go on with hardly any limit so long as the economic possibilities and the political desires for it remain effective.

IV

For each of the 53 European language groups, we found some form of political organization or movement. Further powerful nationalistic loyalties have developed in Europe which are not bound to a separate language of their own: one long before 1800, the Swiss; a second in the nineteenth century, the Belgian; a third at the beginning of the twentieth century, the Macedonian;[16] and a fourth, a border-line case, the nationalism of those

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[14] Cf. the section on Scotland in A. J. Aucamp, *Bilingual Education and Nationalism* (Pretoria, 1926); also M. C. Brogan, "Linguistic Nationalism in Eire," in *Review of Politics*, Vol. 3, pp. 225–242 (1941).

[15] "It does not often happen that a language form created by conscious deliberation and planning wins the warm support and widespread acceptance which has fallen to the lot of New Norse, the creation of Ivar Aasen." E. I. Haugen, "The Origin and Early History of the New Norse Movement in Norway," repr. from *Publications of the Modern Language Association*, Vol. 48, No. 2, p. 558.

[16] The Macedonian movement calls for the support of "all Macedonians regardless of nationalities, religion, sex, or political convictions . . . for the establishment of Macedonia as an independent Republic within her geographical and economic boundaries." Cf. Ch. Anastasoff, *The Tragic Peninsula; A History of the Macedonian Movement for Independence since 1878* (St. Louis, 1938), pp. 308–310.

Scottish nationalists whose loyalties are attached to Lowland Scots.[17] Non-linguistic nationalistic organizations claim members from among the speakers of four languages in Switzerland, of two languages in Belgium, from members of the whole kaleidoscopic language map of Macedonia. In all these cases, there are at least two loyalties open to the members of many language groups. The Bulgar-speaking Macedonian may follow the Macedonian IMRO or the Bulgarian government; there have been Flemish separatists and Belgian patriots among the Flemish-speaking Belgians, often in intense conflict during the first World War and ever since; there are regionalistic Bretons and Provençals who are ardent French patriots—and there are those who were accused of separatism;[18] there are patriotic, and there are Pan-German, Swiss in German-speaking Switzerland; and in Austria, Chancellor Engelbert Dollfuss died in 1934 for what he conceived to be his patriotic duty to Austrian independence and the "Austrian spiritual character," while the Austrian storm-trooper who killed him went to the gallows for what he had been taught was his duty to Greater Germany. The enumeration is by no means complete. More hopeful features for a possible solution are to be found in that British loyalty which today unites the overwhelming majority of Englishmen, Welshmen, and Scotsmen. But elsewhere there is a considerable list of cases where within the same communities of language the loyalties of nationalism are in intense conflict on both sides, demonstrating their disintegrating power.

V

The growth of linguistic diversity in Europe from 16 languages in 1800 to 30 in 1900 and to 53 in 1937 has been paralleled to some extent since 1871 by the growth in the number of modern sovereign states in Europe from 15 in 1871 to 21 in 1914 and to 29 in 1937,[19] as well as by the steady rise in the height of the tariff walls and other economic controls separating their national economies from each other. So far, the second World War has shown little indication of a reversal of the trend. The great European powers have been careful to reckon with the vitality of nationalistic feelings, trying to utilize them wherever practicable. By the spring of 1941, Hitler's armies had created two new states, Slovakia and Croatia, and had tried for a time to foster a movement for a third new state among the Bretons in France.[20] The Soviet government had set up, largely along linguistic lines, two new "Union Republics," the Finnish-Karelian and the Moldavian.[21] Iceland, under British occupation, dropped her last tie of personal union with Denmark in order to emerge in full legal sovereignty. For the Allied nations in particular, the liberation of small nations has become both a major war aim and an important political weapon.

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[17] W. A. Craigie *et al.*, *The Scottish Tongue* (London, 1924), pp. 3–46.

[18] P. Pansier, *Histoire de la Langue Provençale à Avignon* (Avignon, 1927), Vol. IV, pp. viii–ix.

[19] F. Martin (ed.), *The Statesman's Year-Book, 1871* (London, 1871), pp. v–ix; also *1914*, pp. xix–xxix; and *1937*, pp. ix–xiii.

[20] *New York Times*, July 14, 1940, p. 21: 1–3; July 26, p. 3: 7; July 27, p. 6: 3.

So far as the language factor is concerned, the bulk of the evidence shows for the years from 1800 to 1941 a steady increase in the diversity and strength of nationalistic feeling. In the long run, the peaceful unification of Europe may have to be brought about against this very current. To deal with it democratically and constructively, our understanding of the functioning of nationalism, already advanced by the pioneering work of scientists like Carleton J. Hayes and Hans Kohn, and of statesmen like Dr. Eduard Beneš and the late T. G. Masaryk, will have to be further developed and extended.

KARL W. DEUTSCH.

Wallingford, Conn.

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[21] A representative of still another European nationality—the 54th—spoke at the "All-Slav Conference" in Moscow on Aug. 10 and 11, 1941. According to the report, he represented 400,000 Slonzaks or Lakhs, a Slav people on the borders of Czech and Polish Silesia. *The Slavic Peoples Against Hitler* (New York, 1941), pp. 20–21.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

As reconstituted under the chairmanship of Howard White (Miami University), the American Political Science Association's Committee on the Social Studies consists for the current year of Roscoe L. Ashley (Pasadena Junior College), Robert H. Connery (Catholic University of America), Russell M. Cooper (Cornell College), Henrietta Fernitz (Chicago Teachers College), Samuel R. Harrell (National Foundation for Education), O. Garfield Jones (University of Toledo), David W. Knepper (Mississippi State College for Women), and Harrison C. Thomas (Board of Education, Brooklyn, New York). With Charles S. Hyneman (U. S. Bureau of the Budget) as chairman, the Committee on War-time Services includes Merle Fainsod (Office of Price Administration), Ernest S. Griffith (Library of Congress), William Jones (University of Oregon), Robert D. Leigh (National Resources Planning Board), Kirk H. Porter (Iowa State University), and Herman Walker, Jr. (U. S. Department of Agriculture). To the list of members of the Committee on Research, as announced in the April issue of the REVIEW, should be added the name of Robert D. Leigh.

President Anderson has reappointed last year's committee to consider the amendment or revision of the constitution and by-laws of the American Political Science Association. Suggestions or proposals from any member of the Association will be welcomed, and should be sent to Professor Robert E. Cushman, Cornell University, chairman.

Professor Harvey Walker, of Ohio State University, has been elected to, and has accepted, the new office of assistant secretary-treasurer of the American Political Science Association. Professor Walker has recently been promoted to the rank of Major in the U. S. Army, and continues to be stationed at Columbus, Ohio, as Assistant Finance Officer in the Army.

At the University of Illinois, the seventh annual Edmund J. James Lecture was delivered on March 31 by Professor Charles E. Merriam, of the University of Chicago, on the subject of "Post-War Planning."

During Yale University's new summer term, Professors Grayson L. Kirk, of Columbia University, and E. E. Schattschneider, of Wesleyan University, will be visiting lecturers, the former giving the lectures in the introductory course in American government, the latter offering a course in American political parties.

Professor Harvey C. Mansfield, of Yale University, has taken a position as administrative officer of the Division of Consumers' Durable Goods of the Office of Price Administration in Washington. He has been granted leave of absence from Yale.

Professor Lindsay Rogers, of Columbia University, has become assistant director of the International Labor Office, whose headquarters are now in Montreal. Professor Rogers is the second American to be appointed to this post, the first having been Mr. John G. Winant, who became assistant director in 1935 and director in 1939.

Dr. Marshall E. Dimock, of the U. S. Department of Justice, has been appointed director of the Recruitment and Manning Organization of the War Shipping Administration. This new organization is charged with responsibility for recruiting a supply of American seamen adequate to keep pace with the ship-building program, and to provide pools of seamen and officers for both American and United Nations ships.

At the annual dinner of the American Philosophical Society, on April 25, the Henry M. Phillips prize ($1,500) in the science and philosophy of jurisprudence was awarded to Professor Edward S. Corwin, of Princeton University, with a citation specially mentioning Professor Corwin's recent book, *The President: Office and Powers*. This was the sixth award since the prize was originally established in 1888.

On April 16, Professor Clarence A. Berdahl, of the University of Illinois, lectured at Augustana College, Rock Island, Ill., on the subject of "The League of Nations and the Failure of International Coöperation, 1919–39."

Professor A. Whitney Griswold will be on leave from Yale University during the academic year 1942–43 in order to hold a Guggenheim fellowship for the study of the political significance of American agriculture—especially a study of the influence of agrarianism on the history, political institutions, and national economic policies of the United States.

Dr. Charles C. Rohfing, chairman of the political science department at the University of Pennsylvania, has been appointed chairman of the defense housing committee of Delaware county, Pa.

Dr. Bennett M. Rich, of the University of Pennsylvania, has accepted a first lieutenant's commission in the Army and is attached to the Office of the Provost Marshal in Washington, D. C.

At Purdue University, Dr. J. William Robinson has been advanced to the rank of associate professor of political science.

Professor Fritz Morstein Marx, of Queens College, served as visiting lecturer at Yale University during the past half-year, giving a course in public administration.

Ohio State University has extended for a second year Dr. William Ballis's leave of absence for work with the government. Dr. James T. Watkins, IV, has been reappointed in his place to continue the Far Eastern courses in 1942–43.

After Dr. Hugo Kelso, of Denison University, was called to active service as a reserve officer during the past spring, his work was taken over by Dr. H. Schuyler Foster, Jr., of Ohio State University.

Professor Emmette S. Redford has been given leave of absence from the University of Texas to accept the position of regional price executive in the Office of Price Administration at Dallas, Texas, and Dr. H. Malcolm Macdonald has been called to active duty as an ensign in the United States Navy.

Professor Merle Fainsod, of Harvard University, is serving as director of the Retail Division of the Office of Price Administration.

Professor Wilson Godshall, of Lehigh University, is one of a group of civilian lecturers in the orientation program of the War Department, and in this capacity is addressing army posts and camps on the basic factors in the Far Eastern situation.

Dr. John J. George, of Rutgers University, now completing his third year as township councilman, and his first year as mayor, will seek reëlection this fall. He continues in charge of the finance and police departments, and is actively engaged in the local zoning and public works program.

Mr. Oliver J. Lissitzyn, research fellow at the Council on Foreign Relations in 1939–40, is now serving on the staff of the Coördinator of Information. A volume by him has recently been published under the title of *International Air Transport and National Policy.*

Professor Charles Fairman, on leave from Stanford University, is attached to the Office of the Judge Advocate General in Washington.

Mr. Joseph P. Pollard, who recently completed a series of lectures on "American Political Ideals" at Colorado College, has been appointed assistant professor of political science at the University of Denver.

At Massachusetts State College, Dr. Charles J. Rohr has been advanced from assistant to associate professor.

Dr. Albert P. Ludwig has been appointed chairman of the department of social studies and history at the Eastern Washington College of Education, Cheney, Washington, with the rank of full professor. He succeeds the late Dr. David G. Cobb.

Dr. Valentine Jobst, assistant professor at the University of Illinois, has been commissioned as first lieutenant in the Army Air Corps and called to active duty.

Professor Allan Saunders, recently of Pomona College, has accepted a position at Amherst College, effective with the 1942 summer term.

Dr. Irving Segal, instructor at the University of Pennsylvania, has been named legal adviser to the Philadelphia Office of the Price Administrator.

Dr. James J. Anderson has resigned as technical associate of the Institute of Local and State Government at the University of Pennsylvania to accept a commission in the Army.

Dr. Nicholas Domas, formerly of the University of Chicago, served during the past semester as acting professor of political science at the College of William and Mary.

At Iowa State College, Professor John A. Vieg is president of the local chapter of Federal Union, an organization concerned with promoting the "Union Now" program of Clarence Streit.

Professor Francis O. Wilcox, of the University of Louisville, is at present holding a post in the Office of the Coördinator of Inter-American Affairs.

Dr. Maxim von Brevern, executive secretary of the Bureau of International Relations at the University of Washington, has been advanced to an associate professorship.

Professor Cullen B. Gosnell, of Emory University, will exchange with Professor Linden A. Mander, of the University of Washington, for the summer of 1942.

The Eighteenth Institute of the Norman Wait Harris Memorial Foundation in International Relations was held at the University of Chicago, June 20–25, on the subject of "The Near East: Problems and Prospects." Professor Philip W. Ireland served as director.

The staff of the Institute of Local and State Government at the University of Pennsylvania has participated in the preparation of four training manuals for civilian defense personnel. Three were prepared especially for Philadelphia—for wardens, auxiliary police, and auxiliary firemen—and one is a basic text to be used throughout the state.

Several members of the staff of the Institute of Local and State Government at the University of Pennsylvania have been named to Civilian Defense posts: Dr. Stephen B. Sweeney, as associate director of training for the state; Dr. James C. Charlesworth, as procedure analyst and director of training for Philadelphia; Dr. William H. Young, as assistant director of training for Philadelphia; and Mr. John T. Hermansen, as supervisor of training in the state organization.

The Secretary-Treasurer of the American Political Science Association has some remaining copies of the panel portraits of the past presidents of the Association as published in the REVIEW for December, 1938. These portraits, printed on one page, twenty-four inches long and twelve inches wide, will be mailed to any address on receipt of sixty cents. Address orders to the Secretary-Treasurer, 105 Harris Hall, Evanston, Ill.

The fourth annual meeting of the Pennsylvania Political and Public Administration Association was held in Harrisburg April 24–26. The general theme was "Pennsylvania's Rôle in the War Effort."

The sixteenth annual session of the Model Assembly of the League of Nations was held at Bryn Mawr College March 29–31, with twenty-four colleges participating. Dr. Helen Dwight Reid of Bryn Mawr was chairman of the Intercollegiate Continuation Committee, in charge of the planning and direction of the Assembly. This year's session was devoted to a consideration of the special problems of the transition period between the close of active warfare and the establishment of permanent peace institutions.

Among persons appearing on the program of the fourth annual Public Affairs Conference, held at Elsah, Illinois, May 1–2, under the auspices of the School of Government at Principia College, were Professors William Anderson, of the University of Minnesota, and William Y. Elliott, of Harvard University.

Under the auspices of the Pacific Southwest Academy, of which Professor Raymond G. McKelvey, of Occidental College, is president, a Conference on Planning for Reconstruction was held at the University of Southern California on April 11. Attention was devoted particularly to problems of transition to a peace-time economy in southern California. Coöperation of public agencies in meeting emergency needs of a social and economic nature was discussed by Professor Gilbert G. Lentz, of Occidental College.

During the third meeting of the Ministers of Foreign Relations of the American Republics, held at Rio de Janeiro, January 15–28, 1942, the full official report of the debates and proceedings was printed day by day by the Brazilian Ministry of Foreign Relations, in Portuguese, under the title: *Diario das sessões.* While these debates and proceedings were intended for the delegations at the meeting and for the information of the governments participating, the size of the edition seems to have been small. It is to be hoped that the Brazilian Ministry of Foreign Relations will make a certain number of sets available for deposit in the principal centers for international studies. It is peculiarly unfortunate that little or no provision has been made for such deposit of the full printed official records of the important Inter-American Conferences by the governments of the Republics in which these Conferences have taken place.

In his fifty-ninth year, Dr. Russell McCulloch Story, president of Claremont Colleges and professor of political science, died suddenly on March 26 from complications induced by overwork. The loss of his inspiring counsel has been felt not only by the federated colleges at Claremont, but by many devoted friends throughout the country. He had extraordinary gifts of leadership: solidity of character, high ideals, sound judgment, genius as a teacher, insight and sympathy in guiding the young; and at the same time a capacity for administration which is rarely found among men of scholarly tastes. Although born in the Middle West and active there for many years, first as a journalist and later as a teacher, he became equally familiar with the Atlantic and Pacific seaboards. Receiving his bachelor's degree at Monmouth, and his doctorate at Harvard, he taught at Clark, Monmouth, Illinois (ten years), Syracuse, and Pomona (thirteen years). It was in 1937 that he began his short, but distinguished, career as president of Claremont Colleges.

The University of Chicago has announced a program of instruction and research in Communications and Public Opinion, commencing with the spring quarter, 1942. The program is directed by a committee of faculty members from various departments under the chairmanship of Professor Robert Redfield, dean of the Division of the Social Sciences. The committee undertakes to initiate and coördinate studies of local communications and local attitudes with reference to problems of public policy. The training program seeks to qualify students (especially women and men deferred under the Selective Service Act) for professional service with federal and other agencies concerned with problems of national morale, analysis of enemy propaganda, the sampling of public opinion, and the social effects of promotional activities. College graduates with basic training in social science and languages may enroll in the summer quarter and any quarter thereafter.

At the request of President Roosevelt, a committee of administrators and scholars has been established to supervise the collection of current war administration records. As announced by Harold D. Smith, director of the budget, the group—to be known as the Committee on Records of War Administration—will include Professor Arthur Schlesinger, president of the American Historical Association; Dr. Louis Brownlow, president of the American Society for Public Administration; Professor William Anderson, president of the American Political Science Association; and Dr. Waldo G. Leland, director of the American Council of Learned Societies. Dr. Solon Buck, head of the National Archives, will serve on the committee, and the Library of Congress and the Office of Facts and Figures will be represented by Mr. Archibald MacLeish. A small staff of analysts will be directed by Dr. Pendleton Herring, of Harvard University, who has been working on the problem within the Bureau of the Budget since last fall. Lack of information on the administrative problems of the last war and the loss of valuable documents at that time, handicapping the present war administration, are cited among the reasons for the project.

The United States Information Service of the Office of Government Reports (1405 G Street, N.W., Washington, D. C.) has on hand a number of copies of the "United States Government Manual" which will be distributed, free of charge, to all teachers of political science and civics who are interested in receiving copies of the same. Requests should be sent directly to the United States Information Service.

BOOK REVIEWS AND NOTICES

Religion and the State in America. By Evarts B. Greene. (New York: New York University Press. 1941. Pp. 172. $2.75.)

That the issues involved in the relation of religion and the state in this country are by no means dead, and may indeed become once more of vital significance through the expansion of governmental functions, and that an historical examination of these issues may throw light both on conditioning factors and on fundamental principles, are theses fully justifying Professor Greene's book. Unfortunately—though intelligibly, since the work consists of the Anson G. Phelps Lectures on Early American History—the emphasis is more on the making than on the testing of the tradition, and, even as far as the former is concerned, the treatment of the period from the ratification of the Constitution onward is quite inadequate. Moreover, the relationship between making and testing is not entirely clear.

Professor Greene first shows that the Protestant Reformation did not destroy the doctrine of collaboration between church and state, with responsibility on the part of the latter for insuring that men lived in accordance with Christian tenets. It did, however, lead variously to state definition of acceptable belief and social behavior and to religious domination of the state. In the early colonies on this continent, Spanish and French Catholic, as well as Dutch and English Protestant, collaboration was indeed close. Nevertheless, apart from the separatist doctrine and practice of Roger Williams in Rhode Island, other factors made for the growth of toleration in various ways. Home governments as well as proprietors found it to their political and economic interest in terms of population and man-power to attract settlers by more or less liberal policies of tolerance to dissent in the various established religions. Later, and particularly following the Revolution, in terms of natural rights doctrine and deism, disestablishment made gradual headway until the formal separation of church and state was virtually complete, though the developments were not uniform in time or character.

There survived, too, a very general feeling that essentially the nation was in some sense Christian, though freedom of worship or non-worship and full political rights regardless of belief were gradually extended to all. This did not, of course, mean the destruction of social and personal religious intolerance. Nor did separation entirely solve political problems and issues, on the one hand involving church freedom from taxation on grounds of social service, and on the other hand the degree to which the state might in terms of its interests compel citizens in such fields as education, regardless of belief. These and similar problems continued to raise awkward questions in the "twilight zone." Moreover, particularly with authoritarian churches, with a large number of members, the issue of how far political power through voting or pressure groups might be used to enforce social practices on others of different viewpoint, or to prevent them from enjoying a desired freedom in such matters as birth-control, became of great importance.

Professor Greene believes that the main issues of the present and future turn around the question of education, though he also has something to say concerning religious belief, the conscientious objector, and naturalization, where on the whole he takes the avowedly liberal viewpoint. The first-mentioned problem, he thinks, can be solved by informal compromise and a refusal to push theories to rigid extremes. He is quite correctly afraid of state absolutism, with its lack of regard for religious conscience and moral insight, and he sees in the background the evils of totalitarian destruction of individual freedom. But his emphasis on education, as against other social problems where uniformity may be necessary for effective administration and the furtherance of social welfare, as well as his failure to develop the awkward consequences of religious groups using their political power in terms of their conviction of right to prevent others from enjoying desired freedom and what they deem to be welfare, leads him to underestimate the real difficulties of the future. Statism may be an evil, but religious conscience may at times be used both to hamper necessary social legislation and to deny freedom to those not of particular religious groups. Democratic accommodation, given the continued health of our cherished institutions, can no doubt bring continuous compromises, and may even solve some of the problems which arise. Yet repeated conflicts on ever-changing grounds seem inevitable, and undoubtedly it will prove impossible to avoid either injustices and hardship in governmental treatment of the too nicely scrupulous or social suffering at the hands of those imbued with religious conviction and at times intolerance. But that is the price we pay for the diversities we cherish.

THOMAS I. COOK.

University of Washington.

Dynamic Administration; The Collected Papers of Mary Parker Follett. EDITED BY HENRY C. METCALF AND L. URWICK. (New York: Harper and Brothers. 1942. Pp. 320. $3.50.)

These papers are a valuable supplement to and development of Miss Follett's *The New State*, published in 1918, and *Creative Experience*, published in 1924. *The New State* presented a refreshing contrast to much of the discussion at the time of guild socialist and other functional-group theories, for its author saw the balance that particularistic political attitudes needed in neighborhood group experience. Miss Follett had returned to Boston early in the century after graduate years (following graduation from Radcliffe) at Newnham to share in the discussions of a circle of alert and creative leaders in education, social work, and industrial relations, had participated in School Center and Minimum Wage Board activities, and reflected, in her theory of politics, that same zeal in relating personal experience and observations to a wide acquaintance with contemporary social theory, psychology, and intellectual pioneering generally that was to mark her work until her death in 1933. Thus she had already noted in 1918 the significance of the proposed Industrial Councils; and in her *Creative Experience* she related the developments in psychology to the problems of human relationships in the politics of government and industry, and was challenging the conception of a raw struggle of pressure groups and interests ending in victory and defeat or compromise by one of a deliberately created agreed solution through the enriching interaction of the participants.

We are fortunate to have her later papers in this country and England (where she spent most of her last years) edited by an American and an English colleague who appreciated the value of her message and the spirit of free inquiry and personal devotion which she brought to her study of human relations. These papers are addressed specifically to problems of administration—organization, coördination, the relations of the parts to one another and to the whole; but they have—and by deliberate intent—a wider application than to business and industry and to administration narrowly conceived. They explore further her valuable ideas of the functional basis of authority and organization, and of the nature of achieving agreed solutions whereby the personality of each participant is enlarged. Each paper is the more effective for its apt use of personal experience, and for the constant insistence upon the need for developing better tools for invention in the social studies. They are for students not only of administration as a special field, but of political theory and politics generally—a much more valuable subject of careful study than more pretentious works. Miss Follett's experiences with industrial and business management and her awareness of the most significant work by scholars in many fields are brought into effective relationship in addresses that are never arrogant or condescending, and are always provocative and rewarding.

The book should be especially valuable to younger political scientists as an illustration of a catholic and eager welcoming of ideas and of experience that leads to fresh thinking.

John M. Gaus.

University of Wisconsin.

The Supreme Court and Judicial Review. By Robert K. Carr. (New York: Farrar and Rinehart, Inc. 1942. Pp. xiv, 304. $1.50 college edition.)

This is the latest volume in Professor Bradley's series on "American Government in Action," and it fully maintains the high standard established by its predecessors. The author, discarding the fiction that the Supreme Court, in exercising its function of judicial review, applies strictly legal rules to constitutional questions, emphasizes that it is a political agency sharing the power to govern. While naturally criticizing some of its opinions, he is primarily concerned with explaining the work of the Court, and he succeeds in maintaining an objective attitude.

After preliminary chapters dealing with "The Quest for Certainty" in law, with its attendant difficulties, and "The Struggle for Power" among pressure groups in society, Professor Carr gives an historical account of the origin and establishment of judicial review in our system of government. Accepting Professor Corwin's analysis of the Constitution as both an instrument for the exercise of political power and a symbol of negative restraint upon government, he gives a general discussion of the ways in which the Court has emphasized one or the other aspect. There follows an analysis in greater detail of the Court's interpretations of the commerce and due process of law clauses.

The limitations which the Supreme Court has announced as affecting the scope of judicial review are then examined, and the author emphasizes the vast extension of this power through the interpretation of statutes and in controlling administrative rulings.

Professor Carr recognizes that the development of constitutional law has depended in large measure upon the personalities of the justices who have made it, and he provides an interesting and valuable chapter on "Personality and Judicial Review." He might have added, as foot-notes, references to the discussion of this topic in the Round Table on Public Law in 1925 (in this REVIEW, Vol. 20, pp. 127–134), and to Irving Dilliard's significant analysis of "A Supreme Court Majority?," written after the decision in the New York Minimum Wage Case (*Harper's Magazine*, November, 1936, pp. 598–601).

This volume will be of great assistance to law and college students in courses in constitutional law. Laymen as well as members of the bar will also find it of much aid to a realistic understanding of the operation and significance of judicial review in the development of governmental powers and in the establishment of restrictions upon their exercise.

ISIDOR LOEB.

Washington University.

Party Government. BY E. E. SCHATTSCHNEIDER. (New York: Farrar and Rinehart, Inc. 1942. Pp. vii, 220. $1.25 college edition.)

This book is one of the volumes in the "American Government in Action" Series; in form and in content, it constitutes an appropriate and useful addition to those already published. It is a hard-headed and realistic analysis of certain factors in the American party system. Professor Schattschneider is no dull describer of the multitudinous details in the formal structure and organization of political parties; indeed, certain portions of the book seem designed as an antidote for the more arid commentaries. The treatment is physiological, not anatomical.

There is, first, a brief justification of political parties because of their very substantial contributions as entrepreneurs in the democratization and simplification of a complex governmental and social system. The two principal types of political organization are political parties and pressure groups. A political party is defined as "an organized attempt to get power" (p. 35), e.g., to control the government. To achieve this control, an electoral majority must be secured. Obviously, there is much in the broad field of politics that does not fall under this or any other generalization, but the writer has definitely limited himself to a consideration of the two-party system and to special characteristics which the American party has developed. Chapters IV, V, and VI, comprising approximately one-half of the volume, portray the basic factors in the actual operation of party government. The relatively successful efforts of our parties to adapt themselves to the requirements of a written constitution, a federal form, the separation of powers, geographic sectionalism, the plurality election of the single-member district, and the plebiscitary presidency are cogently presented. The quest for control (power) and for methods producing an automatic majority in elections by domination of the organization over the nominating process and by the elimination of effective third parties is made clear. On all these subjects, the author's interpretations, in the judgment of the reviewer, reveal the consensus of informed opinion that now prevails.

Professor Schattschneider believes that the most significant feature of the American major party is its decentralization. He presents, with keen insight, evidence of this by describing the character of American legislation, particularly congressional behavior, with its emphasis upon local patronage and other petty business. Likewise, the decentralized forces operative in presidential nominations make nearly impossible a competent central party control, or even a desirable degree of stability in the presidential office itself. To the weakness of national (central) leadership and discipline can largely be ascribed the influence of the ubiquitous pressure groups, whose selfish interests prevail over the general welfare because of the lack of centralized party control. Local party organizations and pressure groups are incapable of directing the great interests of the nation, either now or later; so the future of American politics will be determined by whether or not "party government by national parties adequate to the needs of the nation will emerge" (p. 207).

Although no material errors have been noted, a somewhat repetitious style and the frequent use of the symbols (1), (2), and (3) might well have been avoided.

THOMAS S. BARCLAY.

Stanford University.

American Taxation. BY SIDNEY RATNER. (New York: W. W. Norton and Company. Pp. 561. $4.50.)

The main emphasis of this work centers on the conflict between group pressures and the interests of the majority in the long struggle for a federal tax system of a progressive nature. *American Taxation* is not strictly a history of the development of the national tax and fiscal structure, such as Dewey's *Financial History of the United States;* nor yet a detailed examination of the enactment, amendment, and administration of the income tax, as the Blakeys' work on *The Federal Income Tax.* Essentially, it is a penetrating commentary on the development of the federal tax system, dovetailed with concomitant movements influencing the weaving of the social, economic, and political fabric of the country—manifest destiny, populism, the Square Deal, the New Era, and the New Deal. The evolution of the federal tax system dominates the unfolding picture, and attention is always focused on the cleavage between those advocating excises and customs duties, and those, finally prevailing, to whom the income and inheritance taxes were the *sine qua non* of economic justice.

The important part which the exigencies of war finance played in bringing about the introduction of the income and inheritance taxes is stressed. The author points out that but for the end of the War of 1812 in December, 1815, we might at that stage of our history have had an income tax and an inheritance tax; for Secretary of the Treasury Dallas recommended the adoption of both early in that year. Income and inheritance taxes were imposed during the Civil War, the act of June 30, 1864, having three graduations in rate, 5, 7½, and 10 per cent, with the higher rate applicable to incomes over $10,000. The Supreme Court's decision holding the 1894 Income Tax Act unconstitutional was too recent to permit of the enactment of a similar tax during the Spanish-American War, though an inheritance tax was adopted.

About half of the volume is devoted to the period from the repeal of the war income and inheritance taxes, in 1870 and 1872 respectively, to the ratification of the Sixteenth Amendment and the adoption in 1913 of a permanent graduated income tax. The passage of the Income Tax Act of 1894 and its subsequent invalidation by the Supreme Court are the occasion for some illuminating comments on the principal personages concerned. The final stages of the battle to prevent the permanent adoption of the income tax revolve around Senator Aldrich of Rhode Island, leader of the conservatives in the Senate, and at once the arch-foe of the income tax and arch-priest of the protectionists.

During the first World War, the income, estate, and excess profits taxes were the backbone of our fiscal structure. Not until the first administration of Franklin D. Roosevelt, however, did their effective utilization in peace-time begin. Rates were made sharply progressive, loopholes closed, and a comprehensive campaign begun against immunities enjoyed by public employees, public contractors, and public securities owners. The author might also have noted that in the process the federal income tax base has been broadened four-fold, from 2.3 per cent of the population who paid income tax on 1938 income to the estimated 10 per cent that are paying on 1941 income. It is Professor Ratner's observation that 1913 marked the beginning of a federal tax system based on ability to pay, but that this trend was interrupted between 1934 and 1940, despite the Roosevelt tax reforms, by the sharp increase in federal consumption taxes and by the addition of social security pay-roll taxes. This fact, plus the entrance of the United States into the present war, demand, in the author's opinion, further drastic reforms in the income and estate taxes.

While the whole work is well organized and amply documented, there are several points on which more emphasis might have been laid. For example, the gradual change of viewpoint as to governmental expenditures and the place of government in the national economy might have been synthesized into a short chapter. Again, a bird's-eye view of the national tax structure should not overlook the tax systems of the state and local governments, which in 1940 produced almost twice as much revenue as that of the federal government. While the Colm-Tarasov monograph, used to show the distribution of the national tax burden, includes state and local taxes, it might be pointed out that state tax policy in the last dozen years tended toward general and selective excises, paralleling in a general way the same trend in the federal picture without the compensating feature of highly progressive income and estate taxes.

CHARLES F. CONLON.

Federation of Tax Administrators.

Financing the War. BY ROBERT WARREN AND OTHERS. (Philadelphia: The Tax Institute. 1942. Pp. ix, 357. $2.50.)

This is a timely treatment of war finance by eighteen contributors, authorities in their respective fields. The authors are federal government officials, professors of public finance, and representatives from England, Canada, and the field of private business. A realistic approach is indicated in the opening chapters on the function and scope of war finance (Robert Warren) and the implications of federal fiscal policy (Homer Jones). The volume next shifts its emphasis to types of taxes and their application under inflationary war-time conditions. Here the excess profits tax, general sales tax, selective excises, income, and social security taxes are considered. The much debated proposals of forced loans, and of increased social security taxes to offset inflation, are treated by Albert G. Hart. British (Brinley Thomas) and Canadian (William H. Wynne) efforts to control prices and prevent inflation are particularly interesting. Valuable object-lessons concerning our own fiscal policy are suggested from the experience of countries at war longer than the United States.

Avoidance of inflation, or of its disastrous consequences, is the principal objective in any system of war financing. Seven of the authors deal with this aspect of the problem. Borrowing, as a means of financing the war, is treated by Charles C. Abbott and E. Gordon Keith. The adjustments which may be made in easing the impact of defense taxes are given special attention. The possibilities of change in collection methods applicable to income taxes in war-time are presented by Walter Heller. Local taxes and payments in lieu thereof by the federal government are reviewed by Charles P. White. The concluding chapters present views of tariff policies as a source of international friction, and as an influence in post-war reconstruction.

The studies rank with the March, 1941, issue of the *Annals*, and with A. G. Hart and E. D. Allen, *Paying for Defense*, 1941, as among the best of the more extended treatments of war finance. The symposium's permanent value lies in the fact that its articles are broadly conceived and stress principles and policies in addition to applications to specific situations. The volume contains a selected bibliography and an index.

EDWARD W. CARTER.

University of Pennsylvania.

American Highway Policy. BY CHARLES L. DEARING. (Washington, D. C.: The Brookings Institution. 1941. Pp. xi, 286. $3.00.)

"This study is the outgrowth of inquiries directed to the Brookings Institution by the Commissioner of Public Roads of the United States Public Roads Administration" (p. v.). Although problems in highway management are raised, the study deals with policies rather than administration. In the words of the author: "The purpose of this study is to formulate the principles which should govern the location of responsibility, the exercise of authority, and the distribution of the financial burden with respect to public roads" (p. 7).

The study divides naturally into four parts: (1) a brief survey of the development of highway policies in Europe, including England, and in the United States (Chaps. I–II); (2) a statement of the policies which have governed highway development in the United States since 1916 (Chaps. III–V); (3) the formulation of policies which should "offer a feasible basis" for highway management in the United States (Chaps. VI–VII); and (4) a summary of conclusions and recommendations (Chap. VIII). The book carries two appendices: "The Good Roads Movement" (with the collaboration of Adah L. Lee, pp. 219–265), and "Statistical Tables" (pp. 266–278). The study is especially well documented and offers convincing proof of a thorough investigation.

The general value of the study would have been enhanced had Dr. Dearing developed his thesis at greater length and established his principles somewhat more conclusively. Because of the brevity of treatment, the supporting evidence in many cases is limited to a series of fact conclusions. In these cases, the reader, otherwise uninformed, is required to accept or to reject the propositions without sufficient opportunity to balance factors or to weigh the evidence. This weakness is especially evident in the author's summary dismissal of competing principles and theories. For example, in discussing the intra-community type of highway, Dr. Dearing concludes that in such roads the economic value is paramount and that, therefore, they should be locally financed. He recognizes the competing "social value" theory and, without adequate development, dismisses it in favor of the "benefit theory" of taxation.

I do not question the soundness of the scholarship or the sincerity of the author. Nor would I condemn the study as a piece of special pleading. I am, however, troubled by the fact that substantial propositions are summarily dismissed. To return to the illustration used above: Dr. Dearing justifies the assessment of the costs of certain intra-community highways against the community by asserting that they are "land access" roads. Are they not at the same time "population egress" roads? If so, what are their purpose? Who are the beneficiaries? And who should bear the financial burden?

In this and in many other instances, the acceptance of a somewhat different approach would have led to quite different conclusions. The brevity of the present treatment precludes a fair judgment as to whether or not another approach would have been equally acceptable. However, in fairness to the author it must be said that this represents a scientific approach to a difficult problem, and that mere disagreement with specific conclusions does not detract from the value of the study.

HAROLD M. DORR.

University of Michigan.

The National Bituminous Coal Commission. BY RALPH HILLIS BAKER. (Baltimore: The Johns Hopkins Press. 1941. Pp. xiv, 356. $3.00, paper; $3.50, cloth.)

When the history of the successes and failures of the New Deal economy is written, Mr. Baker's contribution will serve as an excellent case study.

He has described the administration of a momentous act designed to permit government law to temper economic law. The treatment is primarily from the administrator's point of view. The larger question concerning the desirability of regulation of the coal industry is not discussed. The author takes for granted the necessity of some form of regulation, either private or public.

The coal industry, aptly described as "demoralized," has been a major national problem since the last war. High overhead costs, operator-miner differences, and the increased use of coal substitutes are but a few of the difficulties requiring attention. As in many another industry, the national government passed laws and created administrators with the hope that it might aid the business that controls half of the coal resources of the world.

The regulatory act of 1935, killed by the Carter case, and its successor of 1937, are described in all of their complexity. The objective of the laws was, briefly, to cause a profitable business to appear where one had not existed before, even in prosperous times. That the administrators sometimes found trouble in conjuring up the black magic that the laws demanded occasions little surprise.

The most significant contributions of the treatise lie in the analysis of the trials and tribulations of the Coal Commission. Internal disputes over organization and personnel mar the agency's record. The author's adequate account of the politics within the Commission is indispensable to an understanding of the weaknesses of administrative regulation. Particularly interesting is the position of the Consumer's Counsel, who more frequently than not turns out to be nobody's friend—not even the author's.

A quasi-legislative, quasi-judicial agency (which the Coal Commission was until 1939) can be made or broken by its relations with other government bodies. Jurisdictional disputes have frequently enforced inaction or have caused impaired action by the Coal Commission. In skirmishes with the Interstate Commerce Commission and the State Department, the Commission (now the Coal Division of the Department of the Interior) usually appears in the rôle of counsel for the defense of the coal business. The chapter devoted to inter-agency contacts in price-fixing is admirably done.

Additional sections that add to the thoroughness of this study include discussions of some of the specific problems of price-fixing. Also treated are the constitutional aspects of regulation and some current aspects of the problem of regulation.

The author's conclusions after four years of investigation are cautious. He is not satisfied with the success of the law. He is not happy about the administration of the law. He nevertheless believes that the coal industry and the public have benefited in some ways and that the two-year extension of the act to 1943 is justifiable. His study will find a ready place among the several investigations of public regulatory agencies made in the last decade.

CLAUDE E. HAWLEY.

University of Florida.

The Newspaper and Society. BY GEORGE L. BIRD AND FREDERIC E. MERWIN. (New York: Prentice-Hall, Inc. 1942. Pp. xviii, 627. $4.00.)

The Press in the Contemporary Scene. EDITED BY MALCOLM M. WILLEY AND RALPH D. CASEY. Annals of the American Academy of Political and Social Science, Volume 219. January, 1942. (Philadelphia: American Academy of Political and Social Science. Pp. viii, 222. $2.00.)

One judges from the forewords and tables of contents of these two volumes of selected articles that both grew out of an interest in the new pressures and stresses which encompass the present-day newspapers. Chief among the sources of disturbance is the competition of the radio for news and advertising; and not to be left entirely out of account, the tabloids and the news magazines. Reappraisals of the proper relation of the newspaper to the community have been called for by a number of new developments. Even before the outbreak of the present war, the advent of the "service state" of greatly increased powers and responsibilities had raised in new forms the old problem of freedom of the press; the labor union movement had spread to the editorial room; and the reading public, more keenly appreciative of its part in the formation of public opinion, was insisting that the newspaper perform as a community instrumentality, even though privately owned.

The volume by Messrs. Bird and Merwin is directed at showing the newspaper's function in the "pattern of society," stressing its part in public opinion formation and propaganda dissemination. It contains upwards of two hundred selected writings arranged topically in twenty-eight chapters, each introduced by a note by one of the editors. The range of the field is indicated by a few of the headings: "Concepts of Public Opinion," "Freedom of the Press in the United States," "How and Why News is Suppressed," "The Struggle between Press and Radio," "The Newspaper Guild," and "How the Press Sees the Government." The editors spared no pains to make the selection of authors representative of all aspects of newspaper manufacture and of its relation to the community. Included are the names of thinkers associated with the more philosophical consideration of opinion and the news, as Bryce, Lowell, Giddings, and Lippmann; editors of renown, as William Allen White, Charles Merz, H. L. Mencken, Ralph Pulitzer, and Oswald G. Villard; and a long list of specialists in the various lines of publicity and newspaper production.

The book presents a unity unusual in one compiled from so many sources, which is largely due to the high type of materials selected and the care with which they are fitted together. While written for college classes, with such aids as lists of questions and extensive reading references, it furnishes for the general reader an excellent presentation of the facts and views relating to the newspaper as an instrumentality of democratic society.

The current volume of the *Annals*, as usual, is a symposium, whose contributors, in this case, are drawn chiefly from teachers of journalism and editors and writers of newspapers and periodicals. The expressed design of the compilers was to depict the rôle which the newspaper plays in the contemporary scene. The twenty-six different articles are grouped under four headings: "The Place of the Press in Modern Life," "The Newspaper Pattern of Today," "The Press and Fields of Special Interest," and "Responsibilities and Reforms." Professor Brucker states the general function of the newspaper to be to give the individual a picture of the world in which he lives, although this at best is bound to be "only a fuzzy approximation of reality"; while Professor Willey resolves the general function into five specific ones: news, editorial background, entertainment, advertising, and encyclopedic. Another contributor, in a carrying-coals-to-Newcastle spirit, suggests that the newspapers meet the further threats from government, the radio, and other adversaries by the organization of an association to promote a more sympathetic attitude on the part of the public! Taken together, the articles by their presentation of facts and views are sufficient to give the lay reader a fair picture of the chief problems besetting the press today.

EARL L. SHOUP.

Western Reserve University.

Print, Radio, and Film in a Democracy. EDITED BY DOUGLAS WAPLES. (Chicago: University of Chicago Press. 1942. Pp. xi, 197. $2.00.)

The administration of mass communications in the public interest in peace or in war is a subject of paramount importance to the public official and to the social scientist. How do different types of communications affect different groups of people? Can these responses be validly tested? What legal or extra-legal controls should be exercised over the monopolies of press, radio, and film? The answers to these and related questions are given in this volume by ten authorities, varying from radio and film research directors to private and public social science analysts. The book's brevity arises from the fact that it is a collection of papers read before an Institute of the Graduate Library School of the University of Chicago in August, 1941. The papers are better integrated than many symposia.

Government policy and mass communication forms the content of Part I. Ernest Kris presents an illuminating analysis of the characteristics of German "news." News is viewed as a "communiqué" monopolized and singly controlled by the state for purposes of its own advertisement. Convincing examples of a clear-cut "news pattern," Hitler's concepts of propaganda, and "planted news" as a "smoke-screen for military action" are included. By contrast, Kris regards news in a democracy as a "commodity," competitive in nature, and under multiple control.

The next section considers the influence of the press, radio, and film upon public opinion. None of the authors makes extravagant claims regarding the effect of a given channel, and all admit the impact of other forces. Dr. Bernard Berelson presents data on the effects of the press in our country upon the political arguments of the 1940 presidential campaign. His basic technique consists in studying the interrelationship between content analysis, recognition, and agreement. Troublesome variables such as party predispositions and "intensity" and "cruciality" of the argument are also given weight. The reviewer believes that one item, campaign literature, should not have been overlooked in this otherwise seemingly fool-proof analysis of the influence of "print."

In the third part, Professors H. D. Lasswell, H. F. Gosnell, and S. A. Stouffer assay the rôle of the analyst in communications research. Lasswell presents several useful standards for the detection of propaganda characteristically labelled as "presentation," "parallel," "distortion," "distinctiveness," etc., tests. Besides being helpful in noting the effects of propaganda, these analyses are seen as enabling some prediction of the next moves of controllers of totalitarian policies. Gosnell believes, as do a growing number of scholars, that the opinion polls, as now operated, are not an infallible index of sentiment on political issues. His remedies for improved polling procedure deserve consideration. Of opinion studies in general, Stouffer concludes, somewhat pessimistically: " . . . direct research on effects—except in rather specific merchandising situations in market research where techniques closely resembling the controlled experiment have been used—has thus far been disappointing."

Part IV deals with the implications of communications research for the public schools and public library.

An underlying theme of the volume is the necessity for better democratic control of communications. This requires specialists in information, an "élite," to act "as clarifiers of the general public within the areas of mass communication." No common agreement was found as to the status of this "super" organization.

The book is a welcome statement of some of the ideas of pioneers in the field. Moreover, its thumbnail sketches of a score of techniques should inspire further studies.

HUGH A. BONE.

University of Maryland.

Parliament Must be Reformed; A Programme for Democratic Government. BY W. IVOR JENNINGS. (London: Kegan Paul, Trench, Trubner and Company, Ltd. 1941. Pp. vi, 64. 2s. 6d.)

In this booklet, Mr. Jennings presents a program for reform in the British government, after the war, and before an election. Even during the war, he objects to the secret sessions of Parliament. He opposes an election until after peace has been established; and he looks for a return of the two-party system. Some of his proposals will require legislation; others can probably be brought about only in other ways. He urges the need for a redistribution of seats (on account of shifts in population), and the abolition of the occupational franchise which, he states, gives 5,000,000 voters (professional and small business men) who reside in constituencies other than that of their business a double vote. To improve the quality of candidates, he would have the government pay campaign expenses up to £400, and further restrict other expenditures.

Procedure in the House of Commons should be improved by sending most bills for detailed discussion to small expert committees. The power to dissolve Parliament should be restored to the cabinet, instead of being left with the prime minister. The power of the House of Lords to delay public bills should be limited to three months, retaining the limit of one month for finance bills and providing for a joint committee to certify finance bills.

To secure more efficient administration, he advocates a small cabinet, as recommended by the Haldane Committee in 1918, with related departments under a single cabinet member. Promotions in the civil service should favor those with initiative rather than caution. Finally, to improve the quality of members of Parliament, there should be a more active popular interest in political affairs.

These proposals are presented as the most essential needs of the governmental system, and apparently with at least the hope that they will prove acceptable to the existing Parliament. On the basis of his extensive studies of the British constitution, cabinet government, and Parliament, Mr. Jennings has a thorough understanding of the problems involved; and his succinct and well-written program should arouse wide popular interest, which may bring results.

JOHN A. FAIRLIE.

Ohio State University.

The Philippines; A Study in National Development. BY JOSEPH RALSTON HAYDEN. (New York: The Macmillan Company. 1942. Pp. xxvii, 984. $9.00.)

He who would understand why the Filipinos are fighting so efficiently with and for the democracies, and are so unitedly against the Japanese, in striking contrast with the other peoples of Malaysia and India, will find the answers thoroughly documented and interestingly presented without equivocation in this *magnum opus* by Professor Hayden.

Every American political scientist has long been proud of the achievement of the fourth president of our Association in writing *The American Commonwealth* and the similar achievement of our fifth president in writing *The Government of England*. We now have reason to be proud of the recent achievement of a former secretary of our Association in writing this study of national development in the Philippines. That his boldness of conception was inspired by the two above-mentioned achievements is clear from the five parts into which he has grouped the thirty-one chapters of his book: Part I, "People and Government"; Part II, "Political Parties and National Leadership"; Part III, "Education and Nationhood"; Part IV, "Some Problems of the Commonwealth"; and, Part V, "External Relations." The appendices include "The Philippine Commonwealth and Independence Law," and "The Constitution of the Philippines."

To insure his competence to maintain this great tradition, Professor Hayden took a longer time than his exemplars (twenty years) to complete his study, and was fortunate in having even better facilities for his research. But this advantage was, perhaps, essential because the oriental tropics contain certain elements more foreign to the author's (and the reader's) traditional ideals and institutions than those with which Bryce and Lowell had to deal. However, it is evident from careful reading that Dr. Hayden had quite as deep a sympathy for the ideals and institutions of the Filipinos as had Bryce for American ideals and institutions.

The fact that during his last (two-year) term of service in the Philippines, Professor Hayden was vice-governor and secretary of public instruction, then acting governor-general for six months, created the danger that his vision as an objective political scientist might be obscured by immediate problems of administration and by the burning personal criticism to which every chief executive is subjected. However, to this reviewer there is only one chapter which suffers from this myopia, and that is Chapter XV, "The Unrepresented Minorities," where undue space is given to the Sakdal uprising. Since neither Bryce nor Lowell was ever chief executive of fifteen million people of a different race in the oriental tropics when a small uprising occurred, we cannot say positively that they would have resisted this temptation slightly to over-emphasize an administrative experience.

The present-day emphasis on administration is given due recognition in this book by four consecutive chapters, IV to VIII, which explain: first, the splendid civil service built up by the American governors-general from 1900 to 1935; second, the civil service provisions of the Commonwealth constitution of 1935, together with the supporting legislation and executive orders which put these provisions into effect; third, the evolution of a competent corps of professional civil servants under this Filipino-controlled Commonwealth government; and lastly, a detailed outline of the present administrative organization. Two quotations will suffice. "Viewed in the light of its historical development and present characteristics, the Philippine civil service is one of the most successful products of American-Filipino collaboration in the building of the Philippine state" (p. 143). "Although it had assumed its present form before the publication of the report of President Roosevelt's committee (on Administrative Management), the administrative organization of the Philippine government conforms much more closely to the Brownlow plan than does that of the government in Washington even today" (p. 144).

Perhaps the two most interesting chapters are XIII, "Instruments of Liberty," and XIV, "The Politics of Independence," in which the relation of practical politics to the evolution of constitutional forms is revealed with a brilliance that reminds one of Walter Bagehot. For instance, the famous contest in 1921–22 between Manuel Quezon and Sergio Osmeña for political leadership, which most Americans thought was more to the credit of the defeated Osmeña than of the victorious Quezon, did apparently determine that the Philippine Commonwealth constitution of thirteen years later would be constructed upon the American plan of the independent executive favored by Quezon rather than on the English plan of the controlled executive favored by Osmeña (p. 342). This is not the first time that purely personal and momentary clashes for power have determined the basic outlines of a government for the long future.

Many American readers may be disturbed to learn that both the form and the ideals of government in the Philippine Commonweatlth are closer to totalitarianism than to American or British liberalism. President Quezon has said: "The philosophy of *laissez-faire* in our government is dead" (p. 49). Again; "Under our constitution, what is paramount is not individuals; it is the good of the state" (p. 49). Article II, Section 2, of the Philippine constitution reads: "The defense of the state is a prime duty of government, and in the fulfilment of this duty all citizens may be required by law to render personal military or *civil* service." In commenting on this provision before the plebiscite for its adoption, President Quezon said that it was the purpose of the framers of the constitution to "require the personal services of every one of its citizens, both in time of peace and in time of war" (p. 47).

It may also disturb the American reader to learn that under the Commonwealth government since 1936 there has been less local self-government than under the régime of American control before 1936 (Chapter XII, "Increasing Centralization").

About 1924, when American magazines ceased publishing an appreciable number of articles on the Philippines, it was said by one observer that the American public had grown weary of the Philippine problem without having learned anything about it. Professor Hayden has performed a great service, both for political scientists and for Americans generally, by making it possible to achieve an understanding of Philippine problems by a careful perusal of just one book. The reviewer ventures the assertion that all other books to date on the subject were written too early in this development, too fragmentarily or one-sidedly, or were written for the Philippine public and therefore presumed a background which the American reader does not have.

O. GARFIELD JONES.

University of Toledo.

International Rivalry in the Pacific Islands, 1800–1875. BY JEAN INGRAM BROOKES. (Berkeley: University of California Press. 1941. Pp. x, 454. $5.00.)

The title of this volume fairly indicates the scope of the book's contents. The "Pacific islands," as defined by the author, are the groups usually included in the terms Polynesia, Micronesia, and Melanesia. The subject is delimited by a choice of dates which brings the narrative to a conclusion at the time when Germany was becoming a serious competitor for colonies in the Pacific, and before Samoa, Hawaii, and the islands of Micronesia actually passed under the control of any of the great colonial powers.

Any study of international conflict in the Pacific requires some attention to commercial and missionary enterprises in that ocean, but these are outside the main theme of the volume and the traders and missionaries appear only as necessary background. Miss Brookes has written a history of diplomatic and political events. To readers familiar with the history of the Pacific islands during the nineteenth century, it will appear that she has subordinated the vital agencies of European and American expansion to concentrate upon the political events which inevitably followed the activities of merchants and missionaries.

The author has organized her narrative chronologically, usually by decades. When individual island groups were the center of particular interest during any decade, she has devoted individual chapters to the course of events in those islands. This organization was facilitated by the shift of the center of conflict from New Zealand to Hawaii and Tahiti before the middle of the century, and to Fiji and Samoa after 1860. The focus of the book is generally centered upon the Pacific, with the result that there is a reasonably clear presentation of the progress of foreign domination in the various archipelagoes, sometimes at the expense of an equally clear portrayal of the evolution of policy in London, Washington, and Paris.

This is the only recent study of the whole problem of colonial expansion into the Pacific during the nineteenth century. There have been, however, excellent studies of the course of imperialism in some of the archipelagoes, notably with reference to Samoa and Hawaii. The problems of the author, therefore, have been somewhat simplified. The footnotes bear testimony that she has labored in the Record Office in London and in the archives of the State Department in Washington. She did not use the archives in Paris, and she was frankly discouraged by the "imperfectly organized" files in the Division of Naval Records and Library in Washington. There is little utilization of private documents, and there is no evidence that she has consulted the rich resources of the libraries in Australia, New Zealand, and Hawaii. Her research appears to have been more casual than intensive. Information which is not difficult of access in the original sources is quoted from the reports of later officials or from a variety of secondary accounts, both scholarly and popular.

It was perhaps inevitable that this type of research should have led to some errors. These concern minor details, but in the sections dealing with the Hawaiian Islands they are sufficiently numerous to create skepticism in the mind of the critical reader. This is unfortunate, for the errors appear to be the product of carelessness rather than of ignorance, and they do not impair the validity of the general narrative.

The timeliness of the subject and the absence of any other comprehensive study of nineteenth-century imperialism in the Pacific make this a volume doubly welcome. The casualness of much of the research and the all too frequent intrusion of minor errors into the narrative will preclude it from becoming, in any sense, the definitive study of the topic.

HAROLD WHITMAN BRADLEY.

Stanford University.

An Economic Survey of the Pacific Area. Part I: *Population and Land Utilization.* BY KARL J. PELZER. (New York: Institute of Pacific Relations. 1941. Pp. xv, 215. $2.00.)

An Economic Survey of the Pacific Area. Part II: *Transportation and Foreign Trade.* BY KATRINE R. C. GREENE AND JOSEPH D. PHILLIPS. (New York: Institute of Pacific Relations. 1942. Pp. xiv, 208. $2.00.)

Air Transport in the Pacific Area. BY SYDNEY BERNARD SMITH. (New York: Institute of Pacific Relations. 1941. Pp. 120. $1.00).

These three volumes are titles in the Institute of Pacific Relations International Research Series. The first two, which are also included in the Inquiry Series, will be followed by two more to be devoted respectively to

"Industrial Raw Materials" and "The Industrialization of the Western Pacific" (reviewed on p. 590 below). The four are to bring up to date the Institute's invaluable *Economic Handbook of the Pacific Area,* which appeared in 1934. Mr. Smith's work is a report authorized separately by the I. P. R. International Research Committee in 1939. It falls within the Institute's program of subjecting to expert scrutiny potential causes of international friction. The great service of all three volumes is to present in simple and concise form a wealth of material from a great number of public and private sources, many of them in foreign languages and many more not available for use by the average student. In his *Air Transport in the Pacific Area,* Mr. Smith, who is with the Lockheed Corporation, supplements his documentary material with information from confidential sources.

A common pattern of organization is followed in all of these monographs. There is an opening section which discusses matters of general application and presents data for the area as a whole. Sections then follow taking up, in turn, the individual countries. In the volumes of the *Economic Survey,* data are included for China, Japan, Thailand, the U. S. S. R., the U. S., the Dominions of Canada, Australia and New Zealand, and the colonial territories of Manchuria, the Philippines, French Indo-China, British Malaya, and the Dutch East Indies. Omitted from these studies are the relatively insignificant islands of the south Pacific, as well as the highly significant states of Pacific Latin America. The data available for these last are to be collected in a forthcoming monograph. Mr. Smith, by contrast, does include sections for Mexico, Central America, and each of the Pacific seaboard countries of South America. He also departs from the pattern by appending a chapter on the future of air transport.

The two volumes of the *Economic Survey* are essentially works of reference for statistical purposes. Although the introductory section of each is a valuable restatement of the subject in terms of the Pacific area, the body of the monographs consists of tables accompanied by a running commentary. In his population chapter, Mr. Pelzer gives data for such phenomena as trends, distribution, racial composition, and domestic and international migration. The chapter on land utilization and tenure covers crop-lands, pasture, and forests, together with land ownership, tenancy, and exploitation policies. Miss Greene's monograph on *Transport* takes up shipping, railways, highways and motor vehicles, and air lines. After an extended discussion of recent trade controls in the Pacific, Mr. Phillips provides statistics for the volume, content, foreign sources, and foreign markets of the trade of each country.

The presentation of this material does not, and is not intended to, invite systematic perusal. Perhaps therefore such closely printed pages as these are warranted. But it may be asked whether the print, clear as it is, should not have been larger. A study of many of the tables is very difficult indeed, while the footnotes, where much valuable material is to be found, cannot be comfortably referred to without a reading-glass.

Although *Air Transport in the Pacific Area* follows the general plan of the other monographs, it is intended to be not so much a work of reference as a survey of the growth and present situation of air traffic in the Pacific and in the individual countries which border it. As such, it deals with national control of air lines, the air law, domestic and foreign lines and routes, manufacture of planes, and the complicating influence of international politics. The forecast of future developments given in the final chapter is far from discouraging.

But it is a discouraging impression of human affairs which the three volumes leave with one who, like a reviewer, goes through them systematically. To his mind will come Count Oxenstjerna's dictum as to "the little wisdom with which this world is governed." In the dispassionate language of statistics, there is here painted a picture of cupidity and man's inhumanity to man. It is a composite picture for a Thomas Benton to put to canvas. There is the devastation of the privately-owned forest-lands in this country; there is the serfdom of the tenant-farmers in the Philippines, the expropriation of Korean farmers by the Japanese, the American share-cropper, "successor to the former slaves on the plantations" (Pelzer, p. 197); we see political obstacles placed in the way of the proper development of international aviation; the Smoot-Hawley tariff plays its part in accelerating the plunge into the abyss; there is the inveterate American hostility to the latest arrivals on these shores; and many another damning exhibit is dragged out in view. But perhaps most shocking, because of the unexpected and cruel consequences now developing, is the "strenuous opposition from various vested interests" in Australia to a common gauge in place of the four different gauges which are strangling railway transport in that beleaguered land (Greene, p. 79).

James T. Watkins IV.

Ohio State University.

Government and Nationalism in Southeast Asia. By Rupert Emerson, Lennox A. Mills, and Virginia Thompson. (New York; American Council, Institute of Pacific Relations. 1941. Pp. xiii, 242. $2.00.)

Another of the volumes in the Inquiry Series of the Institute of Pacific Relations, this book will rank with the best. It makes no pretense to being an exhaustive treatise on the governments and nationalisms of the varied areas of Southeast Asia, but is a well-written survey of this subject by three competent authors. It is a comparative study, and the authors have attempted to emphasize similarities and differences among the areas in all phases of their discussion. The careful reader will find repetitions in subject-matter, because the authors did not attempt to avoid them. But since the points of view differ, the result is to enhance, rather than to detract from, the value of the study.

Mr. Emerson's introduction summarizes the recent colonial development of the whole area. He points out that "the typical social-economic structure of the region is that of the native peoples tilling the soil and doing manual labor, the Chinese filling the rôle of the middle class, and the representatives of the imperial Powers forming a small but vitally important upper and directing class" (p. 10). He points out that the area under study has characteristically been poor in capital, and that one of the consequences of the depression has been a tendency toward self-contained economies, with an accompanying encouragement of native enterprise. This fact must certainly be considered in dealing with these areas after the present war. The introductory discussion also emphasizes the fact that under imperial rule "no marked development has been apparent in the economic welfare of the great mass of the people" (p. 13). Mr. Emerson shows clearly the importance of the rise of nationalism in southeast Asia and remarks that nationalist movements have generally been contained within colonial boundaries. He also calls attention to the minority problem, in Malaya for example, a fact most often overlooked in discussions of the area. He believes that the Chinese are the most important minority (actually a majority in parts of Malaya), with the Indians next. The attitudes of Burmese, Malays, Filipinos, and Indonesians toward these two groups and the problems arising therefrom are discussed by each of the three authors.

The second part of the study, by Lennox A. Mills, deals with government in the Philippines, Burma, British Malaya, Hong Kong, the Netherlands Indies, Indo-China, Taiwan (Formosa), and Thailand. Like the other authors of this work, Professor Mills makes constant comparisons in discussing administration, taxation, public works, public education, and other governmental functions. These comparisons are most stimulating. Professor Mills has some things to say about proposals for providing equal opportunity for trade, investment, and access to raw materials that should give pause to those who glibly pass off these phrases as solutions for the post-war economy of the areas concerned. His survey gives a clear picture of governmental structure and problems in each of the areas noted above.

In her discussion of comparative nationalisms in southeast Asia, Miss Thompson points out that the influence of the culture and political ideology of the West has been a more potent influence on native leaders than that exerted by such movements as Pan-Islamism or Pan-Asianism—a conclusion in which Mr. Emerson seems to concur. Miss Thompson ably presents some basic conclusions regarding nationalism in this large colonial area, and then proceeds to discuss nationalist movements in the Philippines, Burma, British Malaya, the Netherlands Indies, French Indo-China, and Thailand. She concludes that native nationalism has been a "forced growth," penetrating most deeply among native peoples where common language and pride of race are unifying factors. "But," she states, "from the viewpoint of these countries, as individual units, nationalism has proved a disruptive force. It has made each racial group more self-conscious, more prone to assert itself at the expense of other groups, and either tends toward a disastrous break-up of the present mosaic by some vigilant outsider playing upon this grave weakness in the body politic and social, or leads toward the forced assimilation of the weaker minorities by the most powerfully placed group" (p. 144).

Anyone interested in the war and post-war problems of Southeast Asia will find much information and many stimulating conclusions in this book.

WILLIAM C. JOHNSTONE, JR.

George Washington University.

The Panama Canal in Peace and War. BY NORMAN J. PADELFORD. (New York: The Macmillan Company. 1942. Pp. xii, 327. $3.00.)

The existence of the Panama Canal must be attributed to the vision of men who saw "beyond the limitations of existent realities." So also "the hope for a more ordered future, in which the Panama Canal and Canal Zone may play an important part in increasing the well-being of mankind, lies in similarly transforming present difficulties through enlightened leadership and continued vision."

Thus the author of this latest work on one of the greatest achievements of mankind's genius for construction concludes his preface. Human welfare is not, however, the theme of his book, nor is his theme developed in tune with that aspect of his subject. "It would be erroneous to suppose that the United States built or now maintains the Canal for altruistic ends." The stated purpose of the study is "to describe the Canal as a going concern" in what the author regards as its primary capacity as a part of the national defense system and the national economy and in its so-termed secondary function of furnishing transit for a price to the maritime vessels of other countries. Effort is made to answer questions which confront governmental officials, persons in charge of ships which use the Canal, employees operating the great seaway, lawyers, and the public at large as to how it functions in peace and in war. This the author has accomplished in a competent and workmanlike manner.

After outlining the history of the project from its beginning as far back as the sixteenth century, the book sets forth a careful exposition of American rights and powers as stated and defined in the numerous treaties and agreements that have been entered into both before and subsequent to the construction of the Canal. The normal operation and safeguarding of the Canal, the regulations under which it functions, and the computation of the tolls by means of which it is mainly financed are fully described, as is also the complex array of measures of protection that have been invoked in time of war and emergency. The up-to-dateness of the book is attested by a section dealing with the Lend-Lease Act in the light of the obligations of the international law and treaties applicable to the Canal Zone.

The chapter entitled "Government, Administration, and Business Enterprise" seems likely to be the one of most interest to political scientists. Aided by a comprehensive organization chart, the author takes his readers through a long series of offices, departments, and lesser divisions, from the Governor of the Panama Canal (who is also president of the Panama Railroad Company) and the Engineer of Maintenance down through the ranks to "Silver Messes" and "Mindi Dairy." In doing so, he does much to show not only what this great governmental service is, but how it carries on and what it accomplishes. Following on is a discussion of the economic significance of the Canal, largely devoted to a valuable analysis of the trade passing through it, but also setting forth its own record as a commercial enterprise, which is declared to be "an eminent achievement."

The book may readily be pronounced a worthy contribution to scholarship, meriting congratulations to the author, to the faculty of the Fletcher School of Law and Diplomacy in which he is professor of international law, and to the Bureau of International Research, Harvard University and Radcliffe College, which aided in the work. Few works are flawless. In this one, for example, surely some critics would take exception to the opening sentence of Chapter I: "Manifest destiny impelled the United States to acquire and fortify an interoceanic canal. . . ." The phrase contained in the first two words occurs again in the Conclusion. It seems of doubtful consistency with scholarship.

WALLACE MCCLURE.

U. S. Department of State.

Inside Latin America. BY JOHN GUNTHER. (New York and London: Harper and Brothers. 1941. Pp. xi, 498. $3.50.)

This third volume in Mr. Gunther's "Inside" series is at once indispensable and irritating, a useful contribution to the popular literature on the subject and at the same time a dangerous reed to lean upon.

As in his *Europe* and his *Asia*, the author follows his customary chatty style, his penchant for anecdote and pen portraits. The well-known Guntherian formula has been followed successfully in this volume, and the result is that the book has for months been on all the best-seller lists.

That, in a sense, is a pity, because if the American public in such large numbers is suddenly determined to inform itself about things Latin American, the information should stem from a better grounding than this author has. Bryce's *South America* (to take a much earlier book) or the recent volumes by Aikman and Schurz, for example, have much sounder interpretations than does *Inside Latin America.*

The great value of Gunther's current volume is that it has a mass of pertinent information not to be found elsewhere. It tells us who the important personalities are, what their leanings are, what their backgrounds have been. The material is not always well digested and sometimes not accurate, but in many cases it would be extremely difficult to get from any other convenient source.

The great defect of the book is its tendency to loose and slipshod statements. Thus: Great Britain took British Honduras from Central America a little after 1833 (p. 24); Cuba became an American protectorate in 1898 (p. 25); Mexico is "fabulously" rich (p. 53); Argentina was the first Latin American state to win independence (p. 285); Cuban sugar reached a low price soon after the first World War of three and a half cents a pound (p. 464; actually it was about half that price). The prize example, though, is the statement (p. 395) that one can find along the banks of the Amazon "snakes that may weigh five tons." This reviewer's herpetological counselor reports that Mr. Gunther's snakes are about 9,650 pounds too heavy!

The author's accenting and use of proper names is ordinarily accurate, but at times the Mexican president is reported to be Avilá, at other times Camacho, and at still others Avilá Camacho. Gunther's sympathy for his characters is usually apparent, but his understanding of them is not always so obvious. He has seen with a reporter's keen eye, but his view has often been limited to the surface.

The reader swims—and occasionally sinks—in facts and yet more facts. The author quotes, for example, a lyrically beautiful descriptive paragraph, a poem in prose, from an article about Argentina by Archibald MacLeish and follows it immediately with the statement that "at least 70 per cent of Argentinians live by agriculture—though the production of industrial goods is steadily increasing—and about 95 per cent of the country's total exports are animal or agricultural products." Then the facts continue for 200 more pages. Parts of the volume sound too much, indeed, as if Mr. Gunther had simply copied out his day-to-day notes for the typesetter.

The author's plan of attack was to fly through Mexico, Central America, along the west coast of South America, and back up the east coast, with a glance at the Caribbean. Unlike Caesar, he flew, he interviewed, he wrote. The first chapter is a general survey, the second deals with "The

Fifth Column and Hemisphere Defense," the next twenty-eight with the successive republics, and a final chapter with "What To Do About It." Throughout his study, the author is very conscious of the Axis menace in Latin America.

A reviewer should not be too critical of Mr. Gunther. He is not at home in Latin America to the extent that he is in Europe; but, after all, the book and its sales are as much a commentary on the American reading public as upon Mr. Gunther. Despite its faults, the book has much good material. If only the publishers could furnish a few grains of reportorial salt with each copy sold, all would be well with the inside of Latin America.

RUSSELL H. FITZGIBBON.

University of California at Los Angeles.

The German Delegation at the Paris Peace Conference. BY ALMA LUCKAU. (New York; Columbia University Press. 1941. Pp. xv, 522. $5.00.)

This volume consists of 112 pages of historical monograph, twelve letters of Walter Simons to his wife, twelve pre-armistice documents, and fifty-eight German and Peace Conference papers or related documents. Of the documents, fifteen are published for the first time. The others are assembled from a few printed sources familiar to scholars, twenty-two from David Hunter Miller's *My Diary at Paris.* All who knew or respected Dr. Simons will be glad to have his memorabilia. Miss Luckau writes up the German side of the peace negotiations, which are here sometimes said not to be negotiations since they were in writing rather than in conversation. The German delegation functioned at Paris from April 29 to July 11, 1919; its work is followed in narrative and documents only up to June 22, when the Brockdorff-Rentzau delegation resigned with the fall of the Scheidemann cabinet.

The nature of official documents is that they record the steps actually chosen to be taken out of a number of possible steps. Miss Luckau, for instance, found ten drafts for the German speech of May 7, 1919. For this continuous significance in identifying what was and was not used, and for other reasons, definite standards for editing documents are requisite, and these are a responsibility of the editor more than of the author. The following faults of editing are noted: The "unsatisfactory" (p. 18, note 112) official English versions from *Foreign Relations* are left unannotated; the annexes to Nos. 35, 43, 53, and 54 are unaccounted for; the alternative texts (also involving omissions or additions) of Nos. 36, 46, 49, 56, 57, 60, and 66 are unreflected here.

The reviewer noted two items missing from the list of sources. A series of ten brochures under the general title *Materialien betreffend die Friedensverhandlungen* was issued at Berlin "im Auftrage des Auswärtiges Amtes" in May and June, 1919, and scattered broadcast. Senate Document No.

149, 66th Cong., 1st Sess., assembles the exchanges of notes after May 7, 1919, respecting the *Conditions of Peace with Germany*. Its history may be mentioned. President Wilson, on August 8, 1919, made an unresponsive reply to a Senate request for Peace Conference papers. As I had coming to me at Boston everything given to the press at Paris, I made a practice of frustrating the hostile and heated imaginations of vocalizing senators by turning over for publication files that would tend to pit fact against fiction. Sen. Doc. 149 was presented by Senator Lodge for printing November 5, 1919. These two contemporary publications contain thirty-three documents pertinent to and not recorded in the volume under review. They change the focus of the picture no more than the book itself alters the perspective existent before its publication. But in case anyone wants to bring together what already exists in reasonably compact form, the supplement might contain:

May 21, 1919. Allied extension of time limit, *Conditions*, 77; *Materialien*, I, 43.
June 17. Further Allied extension of time, M., IX, 5.
June 17, 18. Allied apology and German acceptance, M., IX, 6–8.
June 22. Full power of Haniel, M., IX, 25.
——— Accession of Bauer Government, M., IX, 26.
——— Vote of confidence of Reichstag, 31 (cf. Doc. 60).
June 23. Allied reply to Doc. 65, C., 165; M., IX, 35.
——— German protest on French troop movement, M., IX, 37.
June 24. Allied transmission of treaty proofs, M., IX, 38; German corrections to French and English texts, 39–66.
——— German request to negotiate Rhineland occupation agreement, M., IX, 67.
June 25. Allied refusal to negotiate beyond Art. 432, M., IX, 68.
——— Allied note on Scapa Flow sinkings, C., 167; M., IX, 75.
——— Allied note on German troops in Poland, M., IX, 82.
——— German protest at arrest of press attaché and Allied reply, M., 85, 86.
——— German inquiry as to surrender of eastern territory, M., IX, 89.
June 26. German full powers for signing, M., IX, 90, 97.
June 27. German note respecting the Rhineland arrangement and Allied reply, M., IX, 70, 73.
——— German note on delegation's diplomatic immunity, M., IX, 87.
——— Allied transmission of authenticated text of treaty, M., IX, 91.
——— German note on the protocol, M., IX, 93.
——— Allied note on duration of blockade, M., IX, 94.
——— German note on repatriation of prisoners, M., IX, 96.
June 28. Verification of German full powers for signing, M., IX, 98.
——— German reply on Scapa Flow sinkings, M., IX, 80.
July 5. German inquiry and Allied reply as to instruments to be ratified, C., 169.
July 10. German note on deposit of ratifications, C., 170.
July 11. Allied note acknowledging deposit and raising blockade, C., 170.

DENYS P. MYERS.

World Peace Foundation.

The Politics of Mercantilism. BY PHILIP W. BUCK. (New York: Henry Holt and Company. 1942. Pp. viii, 240. $2.00.)

Coming as it does in the midst of the recrudescence of political and economic dictatorship in Germany, Russia, Italy—in fact, everywhere—this is a very timely volume. In a bright and scholarly treatment, the author has deftly patterned an artistic mosaic of the economic and political doctrines of the pamphleteers, known as the English mercantilists, who wrote on these subjects from the fifteenth century through the eighteenth, principally during the century and a half before Adam Smith. The five chapters of the book contain a brief historical background of English mercantilism and economic doctrine (which the author is able to formulate into a remarkably coherent system), the political implications of the mercantilist economics, and the structure of the mercantilist state (so far as the mercantilists had ideas on political science) which was to implement the economic program; and finally a critique of political doctrine and comparisons with present-day totalitarianism.

As an economic system, economists have been accustomed to criticize mercantilism as crude, confused, and incomplete. The individual doctrines, e.g., balance of trade theory, bullionist, colonial, navigation, and population policies, as well, have been considered very bad economics when judged by modern standards. In the framework of existing international relations and of the mercantilist's political objectives, however, the system itself, and the doctrines too, become not only intelligible but reasonable. Perhaps the author goes too far in asserting that economists have failed to recognize this.

According to Professor Buck, "the interdependence of political and economic phenomena" as a fundamental social fact was fully appreciated by the mercantilists. This he calls their chief contribution to political science and economics. Politics and economics cannot be separated without destroying the benefits of collective action on the one hand, or safeguarding genuine social values of freedom of speech and criticism and the maximum sphere of liberty for individual action on the other. The most serious charge against the mercantilists, according to the author, relates to the powers which they were willing to extend to the state without investigating its nature or its sanctions, and also the casual attitude which they had toward problems of administration.

The author has drawn his material from a wealth of primary sources, available in only a few libraries in this country, and has very successfully employed the device of selecting, with discrimination, quotations from the contemporary authors themselves. The text is well documented, and at the end of the book longer notes are found covering an extensive bibliography of English mercantilist writings on particular subjects.

No student of political science, and no economist, should deny himself the profit and pleasure of turning to this book. It is a happy contribution coming at an appropriate time.

JAMES W. BELL.

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Essays on Antisemitism. EDITED BY KOPPEL S. PINSON. (New York: Conference on Jewish Relations. 1942. Pp. xi, 202. $2.00.)

Jews in a Gentile World. EDITED BY ISACQUE GRAEBER AND STEWART HENDERSON BRITT. (New York: The Macmillan Company. 1942. Pp. x, 436. $4.00.)

In a world where apostasy from the liberal faith of the nineteenth century seems to be increasing, the problem of social and political minorities, always with us, assumes an even greater significance. And it is primarily as approaches to the question of minorities in general that these books ought to be examined.

A. L. Sachar and Maurice Samuel, among others, have dealt recently with what is perhaps the oldest minority of all, and their insights have thrown much-needed light on a very complex subject. The books under review fall into the same category, approaching the problem from almost every conceivable point of view.

The studies edited by Professor Pinson include essays by Ralph Marcus, Solomon Grayzel, Joseph Reider, Guido Kisch, Samuel Rosenblatt, I. L. Wechsler, Jacob R. Marcus, and Z. Driesendruck. Essays in the first part examine the question historically and regionally, while the second part is composed of analytical studies. Among the most helpful of the essays, to the student of law and politics, is one by Kisch on the medieval law relating to Jews—a subject which has been notoriously neglected in the past.

The second volume is the more comprehensive of the two, and is the collaborative effort of eighteen authors, including such well-known writers as Carl J. Friedrich, Miriam Beard, J. O. Hertzler, and Talcott Parsons. It is difficult to imagine an aspect of the problem of antisemitism which has not been treated here—from the anthropological to the economic and social. Indeed, the reader will probably suffer from what might be called a surfeit of thoroughness and long for at least a brief chapter enabling him to see the woods amidst so many trees—but that chapter he will not find.

An endeavor is made in both books, and quite successfully, to demonstrate the falsity of certain popular statements about the place of Jews in a world of Gentiles. That Jews do *not* control, but constitute only an infinitesimal part of, the banking structure; that they are not a separate "race"; that their native mental capacity is neither higher nor lower, on the average, than that of others; that they do *not* control the press; that their place in the motion picture world has been grossly exaggerated—these facts are demonstrated beyond peradventure of doubt. Their so-called peculiarities are shown to be largely socially conditioned and "characteristic" not only of Jews but also of other groups similarly circumstanced.

The antisemite, if he were to act rationally, would, after perusing these assays, have to give up his antisemitism. But, as many of the essayists recognize, antisemitic beliefs are essentially rationalizations of prejudices, and to destroy the rationalizations will not eliminate the prejudices. What is the solution? A few advocate assimilation, both culturally and through process of inter-marriage. Yet others urge that Jews as a distinct national group have a definite contribution to make to the culture of the world, and that inter-group collaboration and mutual conference—for example, between Jews and Christians—will provide the basis for a settlement. None recommends the Zionist escape. Some point out that a large measure of responsibility rests upon the Jews themselves—that other minority groups, such as the Quakers, have established such standards of conduct for themselves as to transform persecution and suspicion into confidence and respect.

But whatever the answer, the student of social and political theory will find these essays enlightening.

MULFORD Q. SIBLEY.

University of Illinois.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

The problem of the materials to be covered in introductory courses in municipal administration is a perennial one. Recently, emphasis has been shifting from detailed consideration of the activities of line departments to more elaborate reviews of the controls exercised by auxiliary technical services. This trend is apparent in Stuart A. MacCorkle's *Municipal Administration* (Prentice-Hall, pp. viii, 406, $1.40). It is, in fact, carried to the point where discussion of the major purpose functions is brief and general in nature. The opening chapters on organization and functions in public administration cover familiar ground in an interesting manner. Forms of municipal organization and state-local relations are treated next under the general title of municipal administrative practices. The auxiliary technical services comprise the bulk of the book. Established points of view with reference to personnel agencies, fiscal officers, and other means of control over line departments are treated surely. The growing importance of personnel administration at the municipal level is handled in a balanced manner in the light of the needs of small and large cities.

Although the author places considerable emphasis on what should be in personnel administration, through its development as a tool of the executive in management, he realistically observes that this practice seldom prevails in local government. In his treatment of the functions of the personnel agency, he again emphasizes the desirable goals to be attained by using the personnel agency in the positive rather than the negative sense. The analysis of these positive aspects is brief, but the point of view throughout is constructive and thoughtful. The treatment of fiscal management likewise emphasizes the best practices in organization and procedures. The views of leading authorities have been assembled to give an over-all analysis of the procedures which municipal administrators should keep in mind as adequate and appropriate in budgeting, accounting, pre-auditing, post-auditing, and reporting. The commentary on taxation throws into relief recent trends in municipal revenue systems, stressing, as one would anticipate, the growth in federal aid and state-collected, locally-shared taxes. In the discussion of municipal borrowing and indebtedness, the emphasis is again placed on desirable principles and practices in administration. According to plan, such line activities as the protective functions and welfare administration are dismissed in a summary manner. Throughout, the author has held to his announced emphasis upon the tools of management and their proper use by administrators. For students who are beginning their work in the field of public administration, this book will serve as a clear and general appraisal of the problem of management at the local-government level. It should lead them forward to other works in the field and, let us hope, to the broad areas of public service now open. —A. W. BROMAGE.

In *State Supervision of Local Finance* (Public Administration Service, pp. vii, 65, $1.25), Wylie Kilpatrick goes beyond his earlier studies (*State Administrative Review of Local Budget-Making*, 1927, and *State Supervision of Local Budgeting*, 1939) to survey the entire field of state supervision of local finance. He describes the state organizations set up for this work and summarizes the laws and the state supervisory procedures with respect to local accounting systems, state audits, financial reporting to the state, central control of local budgets and expenditures, supervision of debt incurrence and retirement, and devices for state receiverships and credit facilities for local units. Covering all forty-eight states in one brief survey, the author is compelled to resort to tables to present much of his information. The topical treatment that he is almost forced to use makes it impossible to present the entire system in any one state in such a way as to make it stand out clearly and in bold relief. Despite this blurring of the outlines, the picture is reasonably complete and certainly accurate. As a reference work, the study has a very high value. The author believes that the main purpose of any system of state supervision and control over local finances should be to improve local administrative methods and strengthen local self-government. If there is any reader who feels that the states have gone too far in their meddling in local finance, he will get much comfort by reading between the lines of this study. Remembering that there are forty-eight states, he will be surprised to learn that only one or two use this device for state supervision and only a half dozen use that. How effectively is the state's work done? Everywhere the cry is that there are not enough men and money in the state offices to do what is needed. No state has yet introduced a complete system of uniform local accounting. No state provides a complete annual audit of all local accounts. Local taxpayer appeals to the state against proposed local tax levies, budgets, and bond issues affect only a small percentage of all cases, and in most of these the local authorities are upheld. Thus in fact state supervision of local finance has many difficult miles still to travel. It is doubtful whether in our time we shall see much of this road traversed. The resistance of local authorities to regimentation by the state is truly astounding.—WILLIAM ANDERSON.

Eugene Perry Link's *Democratic-Republican Societies, 1790–1800* (Columbia University Press, pp. xii, 256, $2.75)—Number 9 of the *Columbia Studies in American Culture*—is based upon an unusually conscientious and detailed study of a very substantial quantity of source material, some of it not previously examined, concerning popular political societies in the United States in the last decade of the eighteenth century. These are the "self-created" societies which were at one time the object of a bitter attack by George Washington. The author is of the opinion that they were squarely in the main stream of the great democratic tradition of the United States. In the course of his study, Mr. Link has uncovered useful data concerning the membership of the societies, the social philosophy of the movement, the programs and activities of the associations, and the influence of contemporary European opinion on the movement in America. The social and political ferment of the early years of the constitutional period is evident on every page of the volume. Students of politics will be interested, not merely in the issues of public policy agitated by the promoters of early political associations, but also in the developing technique of organization. If we agree with the general proposition that freedom of association is the greatest of all civil liberties, it follows that the origins of political organization in the United States are a rewarding subject of investigation. Indeed, the most convincing evidence of the importance of these associations is to be found in the attitudes of their contemporary critics. The societies of 1790–1800 were pre-party in character, and are therefore significant as the forerunners of modern party organization. Readers will be grateful to Mr. Link for making available to them an excellent statement of the function of free associations in democratic communities, formulated one hundred and fifty years ago by the Democratic Society of Canaan, New York: "We prefer societies [as a way of investigation and communication], because in them every grade of capacity can furnish something to the general stock of improvement, and because they tend to fraternity, consistence, and due order."—E. E. SCHATTSCHNEIDER.

American Society and the Changing World (F. S. Crofts and Co., pp. xiii, 601), by C. H. Pegg *et al.*, evolved as a textbook for an introductory course in social science, and from the experience of a group teaching such a course at the University of North Carolina. The authors have not been able to rise above the inherent handicap of sketchy treatment of too wide a variety of subjects scattered throughout the fields of political science, history, economics, and sociology; and they are insufficiently identified, both on the title page and in their respective chapters. The oft-repeated error that the Senate of the United States ratifies treaties occurs on p. 22, placing upon the instructor an unnecessary burden of explanation, although the correct statement by another author appears on p. 246. Some chapters are poorly organized, e.g., "Vital Principles and Forces in Politics"; others are not well integrated, e.g., "The Second World War." Although the book is for an introductory course, the author of the chapter on the Far East assumes "that the reader is already familiar with the main features of European imperialism in Africa and Asia!" Consequently, pp. 161–167 are inadequate and in some instances misleading, as on p. 167 where it is stated that the signatories to the Nine-Power Treaty of 1922 undertook "to *maintain* China's independence and territorial integrity." The commitment—correctly stated by another author on p. 340—was to "respect" that integrity. The chapter on Latin America is excellent, but it could be strengthened by an enumeration of the obstacles to hemisphere solidarity. Part II, "The United States and Its Problems," will commend itself particularly to exponents of the New Deal. It is to be regretted that a full appraisal of the shortcomings as well as the praiseworthy achievements of the New Deal program is not presented, e.g., in chapters on labor, unemployment, and social security. The splendid chapter on propaganda might have been included among the "vital forces" in politics. Good chapters deal with the structure of American government, our foreign policy, government and business, agriculture, and conservation. Possibly the strongest section of the book is the last, devoted to sociological problems. Too large and difficult a task was undertaken; but only thereby do we progress.—WILSON LEON GODSHALL.

"Organizing for Total War," *Annals of the American Academy of Politi-*

cal and Social Science (pp. i–ix, 1–199, March, 1942, $2.00), edited by Francis J. Brown, is a symposium "almost exclusively by those who are directly responsible for the administration of the basic programs so essential in total war." It includes articles on the nature of military defense, mobilization, selection and utilization of man-power, the non-service education program of the Canadian Legion, health and rehabilitation of registrants, and venereal disease control, from both the medical and military points of view. Following the articles on production planning and industry, Professor Paul Eliel insists that labor should take the initiative in supporting the war effort by encouraging bond sales, ceilings on wages, and especially by the elimination of gangster elements and the slow-down. He thinks labor should make the citizen aware that labor leads in the battle of the production lines by every possible speed-up of production—however distasteful this may be to many labor leaders. Secretary Wickard discusses the rôle of agriculture. Significantly, he does not advocate ceilings on farm prices. Professor Hadley Cantril's study of shifts in American opinion about the world crisis will interest students of foreign policy. The problems of our fifth column are considered, and also the contribution of private civilian morale agencies, international, domestic national, local community (grass roots), and government (morale) agencies—especially the Office of Facts and Figures. The reader will find discussed the possibilities of economic freedom, and the reëmployment and post-war planning which must follow peace. David Cushman Coyle brings the symposium to a conclusion with the suggestion that to build permanent peace we must use our power unselfishly to produce a world order "permeated by good-will."—ROBERT W. MCCULLOCH.

M. M. Chambers' *The Colleges and the Courts, 1936–1940* (Carnegie Foundation for the Advancement of Teaching, pp. 112, gratis) supplements by bringing down to 1941 an earlier book by the same author in collaboration with President E. C. Elliott. Both volumes present an analysis of "judicial decisions regarding higher education in the United States"; that is, they deal with judicial pronouncements on intra-school relationships—such as the rights and duties of students and faculty with respect to the college or university—as well as with the relationship of the college or university to government and the public. Undoubtedly both volumes have found their way to the desk of many a school administrator, but that will hardly exhaust their usefulness. For the general reader, here writ large are intimations of the impact of changing social pressures upon our educational system. Here, too, is the antidote for the distortion which the sensationalism of the press is apt to foster. Thus the much publicized Bertrand Russell case in New York is presented, of course, but not without its companion, the neglected California Bertrand Russell case in which a different result was reached. Similarly, the well known

Missouri Gaines case is discussed, but so is its counterpart, the little known Missouri Bluford case, in which a United States district court laid the basis for what could become a serious limitation on the rule of the Gaines decision.—WALLACE MENDELSON.

In *Uncle Sam's Stepchildren* (Rutgers University Press, pp. x, 310, $3.75), Loring B. Priest deals with the bungling experiments and changes in the Indian policy of the United States from 1865 to 1887. These changes were dictated by a curious mixture of idealism, carelessness, and greed on the part of the whites. Though believing that "few people in the history of the world have suffered so long or so severely as the American Indian," the author treats his subject with an objectivity which most writers on the subject do not attain. The policies pursued from 1865 to 1880 were, the author thinks, uniformly unsuccessful, but pointed to something better in the eighties. The chapters on the Dawes severalty act are the most interesting. Even this supposedly benevolent measure, carried through with the aid of land-hungry whites, miscarried as a reform. The study is well documented, and the footnotes indicate the use of a large number of important sources. There is no formal bibliography. Since this detailed work is likely to have a greater appeal for the professional than the general reader, the wisdom of placing the footnotes at the end might be questioned. This scholarly work is an important contribution to our literature on Indian policy.—WILLARD H. SMITH.

E. E. Naylor, formerly assistant budget officer of the District of Columbia, has an excellent background for his recent book, *The Federal Budget System in Operation* (Washington, pp. vii, 306). In clear-cut, although sketchy, fashion, he traces the wretched spending experience of the government between 1789 and 1921, when there was little pretense to budget control. Very succinctly, he describes the awakening, at the turn of the century, to the need for budget reform, the pioneer work of President Taft's Committee on Economy and Efficiency, followed by the services of the Institute for Government Research, the passage of the resultant bill which brought the reluctant veto of President Wilson because of a feature which he believed unconstitutional, and the final passage of the measure during the administration of President Harding. The author describes the Bureau of the Budget set-up, showing the complete responsibility of the President in budget-drafting and the manner in which each administrative agency must justify its request for money before the budget message is sent to Congress. He points out the unification of appropriation work in Congress and a bit of the detail work in House and Senate. Here there is a brief chapter, though it would seem that a couple of solid chapters would give a more balanced picture, since the Budget Bureau does not function at all except within the lines of great policy worked out in general legislation. The last half of the book is given over to charts and graphs illustrative of budget work.—BURTON L. FRENCH.

Students of state fiscal administration will be indebted to Paul Alyea for his interesting study, *Alabama's Balancing Budget* (Bureau of Public Administration, University of Alabama, pp. vi, 142), which details the efforts of Alabama to extricate herself from the system of deficit financing caused in part by a lack of proper budgeting methods during a long period of time (state income had balanced with outgo in only four years between 1907 and 1932). As a corrective measure, the Budget and Control Act was enacted in the latter year, and the study deals with the achievements of the state under this and the amendatory act of 1939. The author shows fairly conclusively the close relationship of administrative to fiscal reform; the difficulties involved in financial reform in a state in which the earmarking of funds is so widespread, and consequently in which the general fund is so unimportant; the improvements which have come as a result of a change from a legislative to an executive budget; and the progress which has been made in budgetary control and accounting. The areas in which little or no progress has been made have been pointed out, and accordingly recommendations have been made for further progress. Although of local application, this study is one more piece of evidence to support the unchallengeable view that the era of unplanned state government must end.—WILLIAM H. COMBS.

Among the many books on American democracy which have recently appeared, *The American Idea* (Harper and Brothers, pp. 278, $2.50), edited by Eugene T. Adams, stands out as an attempt to summarize in a broad and elementary fashion the principal factors which have contributed to the creation of democracy in the United States, not merely as a political system but as a national "way of life." It represents the combined work of nine members of the faculty of Colgate University, each of whom contributed a chapter. Two chapters are devoted to the development of political democracy and one to democracy in the American economy; the remaining six attempt to set forth the democratic contributions or the democratic limitations of American science, art, literature, education, religion, and philosophy. The last chapter, an introduction, and a postscript were written by the editor. Despite the varied authorship, the limits of space, and the necessity for generalizations and for frequent elaborations of the obvious, the result, on the whole, is successful in what the volume sets out to do, namely, to give the intelligent citizen a brief review of the democratic forces in the United States which have determined or reflected the dominant spirit of freedom, with its variety of expression and constantly changing aspect.—O. DOUGLAS WEEKS.

Fair and adequate solutions for problems of employee-employer relationships necessitate detailed case studies of these matters in various industries and occupations. Samuel E. Hill's *Teamsters and Transportation* (American Council on Public Affairs, pp. xix, 248, $3.75) meets this need as regards the inter-city trucking industry in New England. The study examines the nature of the industry, its major problems, union attitudes and activities, collective bargaining experiences, and employer organizations. One is surprised at first to note that in this industry employer organizations have received union encouragement. It has been found simpler to negotiate one contract with one organization than to negotiate individually with the many employers in the industry. However, there has been cause for worry lest employer organizations should become too strong—especially after one of them seemed to be advocating a closed shop for employers. The study should prove useful to the student and to the administrator of labor relations. It should not, however, be accepted as a study of a typical employer-employee relationship, since certain factors found here are not common to industry generally—notably the numerous employers who were employees not long ago, and the union encouragement of employer organizations.—CHRISTIAN L. LARSEN.

In his *La Follette and the Establishment of the Direct Primary in Wisconsin* (Yale University Press, pp. 107, $1.00), Allen Fraser Lovejoy portrays in a careful study the struggle to secure adoption of the direct primary. At the time, nominations for public office were made in convention; vested interests could control the election of delegates without great difficulty. La Follette realized the unrepresentative character of the system and wished to return the controls of government to the people. He proposed that nominations be made by direct vote of the electorate. This aroused the opposition of various interests. In order to further the program, La Follette became a candidate for governor. He failed to secure the nomination in his first attempt, but, undaunted, made many speeches in different parts of the state and secured much favorable publicity and support. He was elected governor in 1900. Various direct primary bills were introduced into the legislature. The senate blocked their passage. La Follette again took up the cudgels for the proposal in his campaign for reëlection and brought the issue to a successful end—not, however, without considerable difficulty. The effort's success in Wisconsin gave great impetus to the Progressive movement in the country and brought national attention to a forceful leader.—WALDO SCHUMACHER.

The Housing Yearbook (Chicago: National Association of Housing Officials, pp. 405, $3.00), edited by Coleman Woodbury and Edmond H.

Hoben, is a compendium of information presenting (1) a summary of state and local housing activities; (2) recent developments in public housing, through a series of articles written by various authors; (3) a summary of the activities of unofficial housing organizations; (4) the recent activities of the Association itself; and (5) a directory of housing agencies. Since the book was prepared, an executive order (February, 1942) has consolidated various housing activities of the federal government under a single organization, the National Housing Agency. *The Yearbook* is a valuable reference work for all interested in housing, whether state or municipal officials, real estate men, contractors, social workers, or students of housing problems.—HELEN I. CLARKE.

FOREIGN GOVERNMENT AND POLITICS

Two dollars is the price of *Problems of Modern Government* (University of Toronto Press, pp. xiii, 124, $2.00), edited by R. MacGregor Dawson. In terms of the stimulation one derives from reading this collection of addresses and articles, five of which formed a series of lectures given under the auspices of the University of Toronto's department of economics, the book is worth many times its cost. Charles H. McIlwain contributes "The Present Crisis of Constitutionalism," in which he argues that "England's great, even unique, contribution to constitutionalism is no mere Germanic origin that she shared with so many other countries." Arthur W. Macmahon gives us a fresh and penetrating appraisal of American federalism under the title "Taking Stock of Federalism in the United States." It is refreshing to find both brilliant writing and due modesty in Macmahon's treatment. He has doubts about the yardstick he is using in his stocktaking, but he is never at a loss for the neatly turned word, phrase, or sentence. Dawson, J. A. Carry, R. A. MacKay, and Alexander Brady deal with "The Impact of the War on Canadian Political Institutions," "The Federal Dilemma," "Canada and the Balance of World Power," and "The Economic Activity of the State in the Dominions." To the reviewer, H. McD. Clokie's "Democratic Possibilities in a Totalitarian World" is most significant. It is characterized by tough reasoning in answer to the question, "Must a totalitarian social order be accompanied by a state of dictatorship?" (Clokie envisions an *après guerre* totalitarianism for America because the planning and supervisory machinery built up during the war will have to be utilized to win the peace.) The eventual answer to the question he raises is "No." And the "No" is based upon the continued functioning of old political parties and upon newly invented democratic controls over administration.—J. G. HEINBERG.

The Balance Sheet of the Future (Robert M. McBride and Co., pp. xii, 303, $2.75), by the Right Hon. Ernest Bevin, is a curious compilation put together mostly from speeches made by Mr. Bevin during 1940 and

1941. The often fragmentary statements are arranged in chapters according to subject-matter, and not according to time, place, or audience, and the table of "sources" is vague and occasionally confused. Some of the material is general political exhortation, and in this there is nothing of note, since Mr. Bevin had always endorsed the official Labor policy. About half the material consists of statements of the author as to his labor policies, and explanations of the way they worked. This part of the book is not only fascinating to read, but full of wise suggestions as to how labor can be guided rather than regimented—the essential point of Bevin's policy. Without a constant realization of the background from which the book comes, the volume loses much of its significance. When the Parliamentary Labor party sent its leaders into the Churchill Government of May, 1940, in order to help carry out their own long-declared international policy, they did it with the realization that they were hazarding those domestic policies for which they had striven so long and so hard. Their position was particularly difficult since (owing to the election of 1935) there were fewer Labor members of first-rate ability in the House of Commons than officers which they might have had. In filling the office of Minister of Labor and National Service, those who constructed the ministry felt it desirable to replace previous incumbents by a "strong man," and also to let a labor leader be responsible for any regimentation that they might require labor to undergo. In view of the deficiency of parliamentary Labor leaders, the position was given to a man who had had wide experience in the trades-union movement but no parliamentary experience at all. Mr. Bevin already occupied a peculiar position in the public eye. By many conservatives, he was assumed to be "red." The extreme radicals, on the other hand, considered him a proto-fascist. As Minister of National Service, he was between two fires. On the one hand was labor, believing that its privileges were part of the democracy that England was fighting for. On the other hand were capital and property, formally acknowledging their liability to conscription, but desiring that the complete conscription of labor should come first. Mr. Bevin disappointed both groups. The keynote of Mr. Bevin's policy is touched in his book again and again. "I am told that I ought not to make these appeals, and not to persuade people but to order them. Every decent manager knows that if you overdo the ordering business, you get a reaction and disaster . . . I am told that I ought to compel people to do these things. My answer is that when you have compulsion you must have the ability to select, and when you have to undertake the task of selection, clever as you may be, you are apt to select the wrong people." This is not a book intended for students or scholars, but it is singularly interesting, and for many Americans today may have practical value.—EUGENE P. CHASE.

In spite of so-called American complacency, many people in the United

States were before Pearl Harbor actively preparing against the day when the devastations of war would threaten our security. The American Public Welfare Association presented Mr. Eric H. Biddle with the unique opportunity to study the effects of the war upon the English people. In his pamphlet, *The Mobilization of the Home Front; The British Experience and Its Significance for the United States* (Public Administration Service, Publication No. 81 pp. vi, 47, $0.60), Mr. Biddle recounts his experiences and observations "during the series of blitzes that began with London in September, 1940, and ended with Hull in July, 1941." The author describes British civilian defense administration, including the integration of local and national authorities and the coördination of the activities of all volunteer groups and official agencies, and considers also the broader problem of civilian mobilization. Out of this experience he suggests a program of positive action for the United States. Mr. Biddle admits that "it would be impossible to transfer bodily to United States agencies the pattern of war-time structure and practice of British civilian agencies" (p. 39). He insists, however, that the basic problems are "intrinsically the same" for both, and that the United States should to that extent profit from British experiences. The United States should avoid a civilian defense program which develops a "defense complex," and it must realize that total war demands that special attention be given to the well-being of the civilian population—the industrial and agricultural workers. Thus health and sanitation, food and shelter, recreation and social security, will be more important factors in national defense than bomb-shelters and fire-wardens. A successful defense program must emphasize aggressive action. The French did not comprehend the problem; in Great Britain, the lesson was learned only after Dunkirk. We may hope that the American defense program will be immeasurably strengthened by the English experiences so admirably reported by Mr. Biddle. The pamphlet is a real contribution to thinking and planning in terms of total war.—HAROLD M. DORR.

In *The German People versus Hitler* (G. Allen and Unwin; distributed in the United States by W. W. Norton, pp. 370, $3.25), Heinrich Fraenkel has produced a long, diffuse, and poorly organized book dealing with the various elements of internal opposition to the Nazi régime. Much of the material is pre-war and is a threshing over of old straw already well winnowed. Perhaps the most interesting discussions are those of illegal literature and illegal broadcasting. Writing in December, 1939, when hostilities were still in the "phony" stage, the author holds that the German people were well on the way to ridding themselves of Nazism when Hitler went to war to save his power. Fraenkel admits that the task of riddance was thereby made "immeasurably more difficult." Subsequent developments have shown that the difficulty is far greater now than he envisaged in 1939. The Germans believe they are faced with a choice between total victory and total defeat. Naturally, they prefer the former, even though it means a continuance of National Socialist rule. Among the exiles, Fraenkel is a less interesting writer than Rauschning; and his contribution to an understanding of the Third Reich is inferior to those made by Shirer, Harsch, and others. The style of the volume is excessively slangy, and there is no index.—ROGER H. WELLS.

Samuel E. Thorne's edition of *A Discourse upon the Exposicion & Understandinge of Statutes* (Huntington Library, pp. vii, 194, $5.00) will interest every student of public law and English constitutional history, and will be indispensable for the specialists concerned. The *Discourse* is here printed "from two versions found among the Ellesmere Papers, now at the Huntington Library." Both manuscripts are in Thomas Egerton's hand, but the author of the *Discourse* is unknown. The editor concludes that it was written "prior to 1571, and probably prior to 1567." It is described in the preface as "the earliest treatise yet brought to light on the interpretation of statutes in England." In a learned Introduction of one hundred pages, Mr. Thorne seeks "to place the *Discourse* in perspective." He develops the important thesis that the emergence of the modern public law conception of statutory interpretation was dependent upon the emergence of the idea of parliamentary sovereignty. To the present-day reader, the style and spelling of the *Discourse* are, of course, quaint. Disjunctively appears as "disiunctyvelie," equity as "equytye." Yet many rules have a thoroughly familiar ring: "So that theffecte of the estatute lyeth in the bodye & bowells of the statute," as distinguished from the preamble. "The seconde case whereby the statute shall be taken is *ex mente legislatorum.*" Penal statutes are to be strictly construed, "for the law alwaies favoureth hym that goeth to wracke, nor it will not pulle hym on his nose that is on his knees." Also strictly to be construed are "those statutes that doe abridge the kynges prerogative." Fascinating passages relate to such matters as proclamations and the power of dispensation.—JAMES HART.

The revised edition of *Economic Principles in Practice* (Farrar and Rinehart, pp. 659, $3.50), by Bruce Winton Knight, is designed as a textbook for collegiate courses in economic principles. Only matters of possible interest to students of political science are treated in this review. Unfortunately for this purpose, there is little in the book, of an explicit nature, to report on. The author's views on the rôle of government in economic society may, however, be gathered from the current of thought that runs through many of his chapters. Contrary to the *laissez-faire* school, he insists on the need for positive governmental controls in many areas of our economy. He appraises many of the New Deal reforms as essential to strengthening our economic machine and keeping it in operation, and he expresses the judgment that there is need for increasing participation of government in economic matters. It is the reviewer's opinion that Professor Knight has a realistic appreciation of the important rôle that government must play in our extremely complex and non-self-directing economy. It is for the political scientist to understand the need for, and to provide the governmental machinery best suited for, this active participation of government in economic affairs.—NATHAN L. SILVERSTEIN.

The thirtieth volume of the *Annuaire International de Législation Agricole* (International Institute of Agriculture, pp. lxxiv, 762) contains the text of agricultural legislation adopted throughout the world in 1940. The Introduction by the Secretary-General of the Institute of Agriculture, Professor Ugo Papi, should be particularly helpful.—MULFORD Q. SIBLEY.

INTERNATIONAL LAW AND RELATIONS

The Destiny of Sea Power and Its Influence on Land Power and Air Power (W. W. Norton and Co., pp. 262, charts, $2.75), by John P. Cranwell, emphasizes various changes in land and aërial warfare which have lagged far behind corresponding developments in naval equipment and tactics. For example, Cranwell shows that the use of armored, cannon-bearing vehicles on land and in the air is much more recent than the appearance of such vehicles at sea. Likewise, coördinated maneuvers of masses of tanks and planes began long after navies pointed the way by operating warships in fleets. From instances such as these, Cranwell concludes that land and air forces could be greatly modernized through closer adherence to naval precedents. As advances spread from naval to land and aërial fighting, Cranwell holds, all forms of warfare become increasingly alike, for they rely on the use of armed vehicles. Only through careful coördination of these vehicles, he adds, can the strength necessary to achieve victory today be obtained. Cranwell believes, however, that air power may ultimately become the dominant element, and that a modified aërial version of Admiral Alfred Thayer Mahan's concept of command of the sea may then win wars. In presenting the foregoing theses, Cranwell writes as a staunch champion of naval ways. At times, this attitude leads to minor difficulties, as when he upholds the invulnerability of battleships so shortly before some of these mighty vessels were sunk in the Pacific by aërial attack. Despite his tendency to magnify the navy unduly, at times, and a certain looseness in the organization of materials, the volume remains a basically valid, provocative, and useful document. Written in the layman's language, it reveals an essential unity amidst the apparent chaos of modern technological warfare.—WILLIAM BEARD.

Kate L. Mitchell's *Industrialization of the Western Pacific* (International Secretariat, Institute of Pacific Relations, pp. xvii, 322, $2.50) will be hailed as a valuable addition to the steadily expanding list of the I. P. R. Inquiry Series. The stated purpose of Miss Mitchell's study was "to describe the extent and nature of industrial development in the countries of Eastern Asia and the Southern Pacific," and this purpose has been most satisfactorily fulfilled. In a compactly written text of less than 300 pages, illustrated by 78 statistical tables, the author sets forth the development, and—so far as the available statistics permit—the present status, of industry in Japan, Formosa and Korea, Manchukuo, China, French Indo-China, Thailand, British Malaya, Burma, Netherlands Indies, the Philippines, Australia, New Zealand, and India. Throughout this vast area, populated by approximately half of the human race, only Japan has achieved a fully developed industrialism, and even before the outbreak of the Sino-Japanese War in 1937 it had become obvious "that Japan could not develop a 'war economy' and also maintain the expanding trade in manufactured goods which was so essential for the continued prosperity of the Japanese people as a whole" (p. 30). Although the Japanese now claim to be fighting a war of liberation for the people of Asia, Formosa, Korea, and the puppet state of Manchukuo have been ruthlessly exploited in the past in the interests of Japan's own industrial needs, and the extension of the "New Order" to include China and the Malay World is primarily intended to provide Japanese factories with ever-increasing supplies of raw materials. Yet the Western powers, as Miss Mitchell makes clear in the last half of her study, have little reason for pride in their records. In the areas under Western control, as in those under the domination of Japan, all tendencies toward industrialism—except such as would facilitate the production and export of agricultural and mineral raw materials—have been consistently opposed and obstructed. Throughout the Asiatic possessions of Britain, France, the Netherlands, and the United States, political and financial controls have been effectively employed to prevent the growth of modern local industries which might threaten to impair the profits of industrial interests in the ruling country; and in the case of Britain this policy of economic subordination was applied even to the self-governing dominions of Australia and New Zealand. American policy in the Philippines changed with the passage of the Tydings-McDuffie Act; but the British, French, and Netherlands governments did not withdraw their opposition to industrialism in their colonies until the weakness of their Far Eastern position was brought home by the growing Japanese menace.—G. NYE STEIGER.

In *Social and Industrial Problems of Shanghai* (Institute of Pacific Relations, pp. 74, mimeo., $0.50), Eleanor Hinder has produced additional facts and interpretations which excellently supplement Robert W. Barnett's *Economic Shanghai: Hostage to Politics,* also a publication of the Institute of Pacific Relations. Miss Hinder writes "with special reference to the administrative and regulatory work of the Shanghai Municipal Council. As chief of the Social and Industrial Division of the Shanghai Municipal Council, she has done a pioneer piece of work in the Shanghai International Settlement in bettering industrial conditions and in developing a consciousness of working conditions among employers, both foreign and Chinese. The author discusses industrial conditions, economic and social aspects of employment, employment relations, labor organization, housing, and problems of food, nutrition, education, and child protection in relation to workers in Shanghai. Two factors—lack of adequate legal authority to regulate industrial conditions and lack of understanding of modern employment requirements by the Chinese employers—conditioned the effectiveness of Miss Hinder's work for the Shanghai Municipal Council. Progress toward better conditions received set-backs because of two war periods, 1932 and 1937. Miss Hinder, however, found that the new problems occasioned by hostilities had to be dealt with, and in some cases older difficulties were lessened. Writing before December 7, 1941, Miss Hinder sees signs of progress in new plants, changing attitudes of Chinese employers to balance the great difficulties caused by refugee populations, plant destruction, and the like. It is highly probable, that in spite of complete Japanese control of Shanghai now, the progress made under Miss Hinder's able administration may be of lasting benefit to the Chinese on resumption of their authority over the city. WILLIAM C. JOHNSTONE, JR.

In his *Prisoners of War* (American Council on Public Affairs, pp. 179, $2.75), William E. S. Flory has produced a very readable book dealing with the development and present status of that part of international law which relates to prisoners of war, with special reference to British and American practice. The author states frankly that he has made no attempt "to investigate thoroughly the treatment actually accorded prisoners," but has, rather, based his work mainly on "expressed governmental policies and rules." He likewise indicates that "little reference has been made to the second World War because it is impossible, on the basis of the small amount of information available, to ascertain trends, or even to determine governmental policies." Within these limitations, he presents in successive chapters studies of "Prisonership Categories," "Status and Maintenance," "Activities and Compsensation," "Police Power Limitations," "Release by Consent," and "Release by Other Means." There is also an introductory chapter devoted mainly to historical background, and a brief final chapter entitled "Dynamics of the Law." An excellent selected bibliography and an index complete the volume. Though perhaps inevitably bound to disagree with some of Mr. Flory's conclusions as to existing rules, particularly customary law, the expert will nevertheless find his monograph a handy reference for information and material on many matters of detail not usually covered in the general treatises on international law. The layman, too, should find the book of both interest and value in times like the present when treatment of prisoners of war is frequently a matter of discussion—sometimes very uninformed discussion—in the press, on the air, and elsewhere. Furthermore, for the layman, the volume should serve as an antidote to the frequently held view that there is no more international law. For in it are to be found a not inconsiderable number of rules of that law, and, as Mr. Flory remarks, "despite frequent charges of violation, these rules are more likely to command respect than those proscribing activities that tend to weaken the enemy or to destroy his forces or resources."—VALENTINE JOBST III.

America and World Mastery (Duell, Sloan and Pearce, pp. 338, $2.75) is John MacCormac's very readable contribution to speculative thought on how to win the peace. It may also be described as a good answer to Austen Chamberlain's pointed question: "Must not Americans sometimes think that it would be wiser—and safer—to help guide the course of international events rather than always suffering their consequences?" After telling of America's debt to England, and of Anglo-American friction as well as trade, Mr. MacCormac explains the reasons for America's neurotic political isolationism. He proves clearly "that a free world and even a free America will be impossible unless the United States accepts world responsibility" in coöperation with the entire British Commonwealth of Nations—not in Streit's "Union Now," but rather in a better League of Nations, "a world government of laws" even now backed by the integrated war efforts of the English-speaking nations. The author believes that the inevitable alternative to such a Pax Britamericana is an Anglo-German alliance, even if it means the total loss of Canada, which is half lost already. He makes it crystal-clear that the total bankruptcy of isolationism as practiced by both Britain and the United States is written for all men to see—"not in red ink but in red blood." This sage observation leads one to ask where Russia will fit into the post-war picture.—J. VAN DER ZEE.

Every collection of essays by a group of authors is of necessity a *mélange* of good, bad, and indifferent observations, with a minimum of unity in viewpoint or treatment. The twenty-six contributors to *War as a Social Institution; The Historian's Perspective* (Columbia University Press, pp. 33; $3.50), edited by Jesse D. Clarkson and Thomas C. Cochran, achieve a similar result, despite the heroic efforts of the editors to organize and integrate the various articles into a consistent whole. The pieces, most of which are here published for the first time, represent a collection from papers delivered at the 1939 and 1940 meetings of the American Historical Association. The book, say the editors, "may perhaps be taken to reflect, even in its internal disagreements, the present mood of the profession . . . and may aid a wider public to appreciate some of the factors which specialists, in a perpetually troubled world, deem worthy of consideration." Seven essays deal with sundry aspects of "The Roots of War," four with "The Strategy and Conduct of War," two with "The Neutral and the War," ten with "War and Society," and four with "America and the Present War." All the contributions are informative and suggestive. A few are intellectually exciting. Suffice it to say, with no implication of invidious distinctions, that the most brilliant and provocative of the articles are those contributed by Kimball Young, Bronislaw Malinowski, H. A. De Weerd, Arthur Rosenberg, Benjamin Williams, J. Fred Rippy, and D. F. Fleming. The greatest merit of this work is that the editors have consciously sought to correlate the approach of the traditional historian with that of the social and political scientist. In this endeavor they have come very close to success. The result deserves careful attention by all who are seeking light on the causes, techniques, and consequences of armed violence as an instrument of national policy.—FREDERICK L. SCHUMAN.

On May 21, 1941, the American cargo vessel *Robin Moor* was sunk by a German submarine in the South Atlantic. Passengers and crew were set adrift in two lifeboats and reached safety only after long voyages on the open sea. In *Freedom of the Seas and International Law* (Court Press, pp. 54, $0.50), James W. Ryan uses the incident as the point of departure for a brief treatment of some aspects of the law of neutrality, including contraband and the destruction of enemy and neutral prizes at sea. The book consists of many quotations from relevant treatises on international law, court decisions, treaties, and diplomatic correspondence, interspersed with rather sparse comment by the author. There is little new material here, but the book serves as additional emphasis on the fact that the law of contraband has broken down in the face of modern totalitarian warfare. More important still, the author shows that any right on the part of belligerents to destroy enemy or neutral prizes at sea is contingent on the elemental obligation first to assure a place of safety for the passengers and crew. An open lifeboat far at sea is not a place of safety—thus the connection with the *Robin Moor*. In the case of the *Robin Moor*, the Germans violated not only general international law and specific international agreements, but also, it appears, even the German Prize Code promulgated in 1939 at the outbreak of the war. The organization of materials in this book is not always effective. There is no table of contents, index, or bibliography. However, citations to cases and other references are included in the body of the text.—WILLIAM I. CARGO.

War in the Far East has perhaps concentrated academic as well as popular emphasis on the immediate foreground of scholarship; but American political scientists may find that, at war's end, the purely technical side of their Far Eastern field has been transformed by a number of new, provocative interpretations of Sinocentric civilization. Dr. Franz Michael's *The Origin of Manchu Rule in China; Frontier and Bureaucracy as Interacting Forces in the Chinese Empire* (Johns Hopkins Press, pp. viii, 127, $2.00) is in its conclusions, although not in its contents, a support and further development of Owen Lattimore's recent work on the Chinese frontier. Dr. Michael shows that the Chinese frontier is no mere static limit, but is itself a dynamic political force in China, and illustrates his thesis with the Manchu rise to power, 1583–1644. Accordingly, barbarians never conquered China; culturally "naturalized" Chinese did so, and succeeded only by acquiescence of the vast interior. This modifies the platitude that China absorbed all conquerors, and the study possesses social-science as well as sinological importance. Significant analogies between the Manchus in 1642 and the Japanese in 1942 are generously left by the author to the reader. For example, Dr. Michael says of Manchu propaganda: "This application of Chinese philosophy, the talk about virtue and Tao . . . must seem at first view pretty much like a farce if one compares all this with the reality of . . . conquest. Yet one must not forget that behind the philosophical language of the Chinese state ethics there were always hidden very real political processes" (p. 105).—PAUL M. A. LINEBARGER.

Abraham Weinfeld's *Towards a United States of Europe* (American Council on Public Affairs, pp. 52, $1.00) is a plan for European federation based on the American constitution. His federation would be composed of all the states of Europe, including Turkey, but excluding Britain and Russia, and might form part of a world-wide organization. In the first thirty pages, the author presents his case for a close federation, discusses some constitutional questions, such as separation of powers, and suggests the machinery by which his plan could be put into operation after the

War. In the remaining pages, he provides a text of the constitution for the United States of Europe and a short commentary on it, explaining variations from the model. By outlining a definite plan for federation, Dr. Weinfeld draws the reader's attention to the problems which must be solved if order is to prevail in Europe; but, in the reviewer's opinion, the particular proposals for a presidential system here made will not meet these problems. Nor is his argument for bringing about this type of European union convincing. However, his brief comment on nationalism and his proposal for dealing with the problem of minorities show a very real understanding of the nature of the problems needing to be studied.—HOWARD B. CALDERWOOD.

In *A Wavering Friendship: Russia and Austria, 1876–1878* (Harvard University Press, pp. xiv, 599, $5.00), George Hoover Rupp adds a solid, informative book to the Harvard Historical Studies and the literature dealing with the Eastern Question in the eighth decade of the nineteenth century. It covers to a certain extent the same material as the comparatively recent books of B. H. Sumner of Oxford, David Harris of Stanford, and various short studies by German scholars. Each author, however, has viewed the material from a somewhat different angle. As the title indicates, the work under review concentrates on the relations of Russia and Austria during the critical years, 1876–78. The author emphasizes that the crisis of 1875 was the product of both Russian Panslavism and a military group in Austria, that the Russian diplomatic agents had conflicting objectives, and that the policies of the two governments developed slowly after due consideration of the policies of other powers and the course of events. The author naturally stresses the Reichstadt meeting, the mission of Sumarokov-Elston, the rôle of Bismarck, the Budapest Convention, Ignatiev's tour, the war, and the breakdown of the Reichstadt agreement. The book is written in a clear, but not distinguished, style, and has the apparatus usually found in books of an academic character.—C. P. HIGBY.

For a brief survey of the Netherlands Indies one can turn to that found in *Netherlands Overseas Territories* (Royal Institute of International Affairs, Information Department Papers, No. 28, pp. ix, 92, Oxford University Press, $0.75). This survey of a country with an extremely complicated society and administrative system is a splendid example of successful compression. It is weakest in its treatment of political affairs and strongest in dealing with the economic development of the dependency. This convenient little work also contains surveys of Surinam and Curaçao and the small islands in the Caribbean known as the Dutch West Indies. The surveys, each only a few pages in length, give the most significant facts about these small but not unimportant colonies.—A. VANDENBOSCH.

Neutrality, 1941 (Yale University Press, pp. 70, $1.00), by Harold Bartlett Whiteman, Jr., is the third in a series of undergraduate prize essays written at Yale. It considers general conceptions of neutrality, "United States" and "international" neutrality, the repeal of the arms embargo and the destroyer deal, and concludes with a plea for "neo-neutrality" as described by Cohn. It is a good representative of the best essays written by college seniors. The concepts are large though clear, the sources mostly secondary, the writing, organization, and scholarly apparatus good. The printing of such essays should do much to encourage undergraduate writing.—LLEWELLYN PFANKUCHEN.

In their syllabus, *War and National Policy* (Farrar and Rinehart, pp. 131, $1.00), Grayson L. Kirk and Richard P. Stebbins have provided teachers and students with a useful outline for the study of the foremost problem of modern politics and, on the whole, a helpful guide to the best literature bearing upon the subject. Some will wish that the section on "National Organization for Total War" might have been expanded, even at the expense of the section on "Military Organization, Technique, and Policy;" but, all in all, readers will find the volume fairly proportioned.—JOHN A. VIEG.

POLITICAL THEORY AND MISCELLANEOUS

New Liberties for Old (Yale University Press, pp. xvii, 181, $1.75), by Carl Becker, is a collection of six essays written by an historian over the period 1936–1941, the volume taking its title from the first essay. In the book, the author attempts to treat historically and analytically the philosophic ingredients of democracy and of totalitarianism. Like all collections of the kind, the book lacks a certain fundamental continuity and integration necessary to a systematic study of social and political philosophy, and the viewpoint of the writer as to the operation of democracy, particularly in America, will not win a friendly popular reception at a time when the American people are dedicating themselves to the preservation of the very ideals to which the author claims they yield only lip-service. The first four essays are characterized by a critical attitude toward democratic institutions, virtues, and governmental operation, especially in the United States. Dr. Becker's analysis of democratic virtues leaves him in a pessimistic mood; he feels that they are rapidly disintegrating; that people are inherently selfish, superficial, materialistic, and not very intelligent. In America, whatever achievements we can boast of are largely the result of accident. "Whatever we do will be done for the realization of concrete practical purposes. If we achieve a planned economy, no one will have planned it. If we achieve socialism, it will be without having intended it. . . . Self-interest constantly obscures the common good, and government by discussion works best when there is nothing of profound importance to discuss." Freedom of speech exists only for those who agree with the prevalent political ideology, and tolerance is a very relative term. The characteristic of the American temper is its pragmatism. The author's conclusion as to democratic virtues is that they are rapidly disintegrating and that when the representative principle, which we have retained from habit rather than conviction, disappears, democracy will be lost. In the last two essays, the reader feels the uneasiness of the author over having expressed perhaps too extreme a contempt for the operation of American democracy, and a desire on his part to soften the general effect of his condemnatory criticism. An untimely volume for public reading in these days of national stress!—ELIZABETH A. WEBER.

The relative efficiency of large, medium, and small business was the burden of Monograph 13 of the T. N. E. C. Kemper Simpson directed the compilation and interpretation of the basic data for the report, which the Federal Trade Commission prepared for the T. N. E. C. The conclusions of that study, with additional materials and broad generalizations, have been combined by Mr. Simpson in a volume entitled *Big Business, Efficiency, and Fascism* (Harper, pp. x, 203, $2.50). The book is divided into two parts. Part I presents a brief sketch of the rise of authoritarian government in Italy and Germany, and some comments on the efforts of the United States government to control large-scale business combination. These comments are followed by a general summary of the F. T. C's conclusions. Part II is a detailed discussion of the tables of Monograph 13 (none of the tables is reprinted), and there is an added chapter on the income of workers in large, medium-sized, and small companies which is not to be found in the T. N. E. C. monograph. The discussion of the monograph is an improvement on the monograph itself, and the monograph's conclusions are not misrepresented. The thesis of the volume is that the largest businesses are not the most efficient in terms of either costs or profits. This conclusion applies both to plants and to companies. High wages are not always found in the large enterprises. Although the findings are not so conclusive as on costs and profits, it is made clear that there is no significant correlation between large companies and high wages. The argument, so far, is based on adequate data. From this point, it moves to posit a relation between large business and unemployment, and thence to fascism as a solution for unemployment. The answer to this undesirable sequence of events is to break up the large business organizations and to rely upon competition. Competition is connected with democracy, for the competitive system allows opportunity for all and provides employment. But the connections between this sequence are not delineated clearly. The demonstration of the failure of large business to achieve efficiency, as measured by its own standards, is valuable.—CHARLES B. HAGAN.

Two volumes on war economics stand out as superior products of their respective types: *The Economics of Total War* (Appleton-Century Co., pp. xiv, 410, $3.00), by Henry W. Spiegel; and *War Economics* (Farrar and Rinehart, pp. x, 501, $3.00), edited by Emanuel Stein and Jules Backman. The latter represents the type of textbook which consists of selected articles or symposia, and the former represents an effort to organize and assimilate the new data and to integrate it systematically with the general principles of economics. Dr. Spiegel's book, appearing as a volume in the Century Studies in Economics, edited by Professor W. H. Kiekhofer, is one of the best balanced and most substantial treatments of this subject that has yet come to the attention of the reviewer. The reader does not get the impression that the book was written for the occasion. Despite the fact that the treatment is timely, fresh, and vividly contemporary, the complex aspects of the subject are carefully analyzed and systematically woven into an integral whole. The volume has unity, form, and solid content. Beginning with a realistic analysis of the economic motives and conditions causing warfare, the author proceeds to examine the nature of total warfare and the economic weapons for carrying on war in modern industrial societies. Emphasis is placed upon the war economy of the United States, but the experience of other countries—especially Germany and Britain (where the transition from peace to war was effected within the short period of a few months)—has been liberally drawn upon to illuminate the policies and institutional changes in this country. Following the Keynesian school, the author reacts against earlier tendencies to overrate the purely financial and fiscal aspects of war economics. The real sinews of war are men and materials, and the bulk of the volume consists of a treatment of man-power, the price system in war-time, labor problems, the control of production and consumption, strategic materials, and foods. The final chapters concern international economic relations in war-time, how to pay for the war, and the economic effects, or aftermath, of war. The author is greatly influenced by Pigou, Keynes, and Hicks, of the Cambridge School, which has done so much to develop this field of economics. The documentation is accurate and up to date, and the thirty-one pages of classified bibliography present titles of books and articles selected with intelligent discrimination. The volume edited by Stein and Backman consists of a well-organized symposium of seventeen chapters contributed by seven economists, describing the effects of the war on our economy and explaining the modifications which the impact of defense preparation and war in the United States forces us to make in the "principles of economics" as these operate in times of peace. The first chapter, on the transition from peace to war, serves as an excellent introduction. The nature of total war and the need for planning complete mobilization of all resources available through the several stages of transition present a setting for subsequent chapters. The first eight of these concern maximizing war-time production, labor supply, wage rates and collective bargaining, war finance, price-fixing, and controls of supply and demand. A chapter is devoted to foreign economic regulations and trade control, which is followed by treatment of several special sectors of the economy, i.e., transportation, electric power, housing, agriculture, and consumers. Final chapters are devoted to the impact of the first year of the defense program on business and finance and to post-war problems of industrial demobilization. Fifty-odd pages of appendices contain selected legal material, a short description and a chart showing the present administrative organization of our war effort, and tabular representations on price control experience from June, 1940, to July, 1941. The book is not pretentious. It is frankly designed to serve as a text for college courses on the economics of war, current economic problems, or the like, and should help to satisfy the growing demand at this point.—JAMES W. BELL.

During these times, socially conscious people are naturally speculating on what kind of a world will obtain after the cessation of hostilities. In a very real sense, these speculations represent an honest attempt to define war and peace aims. The Twentieth Century Fund has an elaborate program in this province of social inquiry. The prolegomenon of a series of six volumes, Stuart Chase's *The Road We Are Traveling, 1914–1942* (Twentieth Century Fund, pp. 106, $1.00), merely seeks to state in general the grand scope of the later reports. Behind all his reasoning is Chase's faith in the creation of an economy of abundance. Alvin Hansen is the high priest, with his distinction between extensive and intensive investment. Money will become an instrument for making goods flow; the government will insure a decent standard of life for all. It is no utopia—only an open road down which men may march to the best good life attainable. An obvious omission from this volume is the failure to discuss the effect of war psychology, which in our age of total war is a revolutionary psychology, upon the attempts of the old order to institute a business-as-usual economy. The use of men and women for community ends during an emergency popularizes the idea of mutual interest. In this regard, the author might have interpreted the interim between World War I and II as only a phase in world revolution that began as soon after 1914 as the national peoples realized their importance in the attainment of national aims.—CORTEZ A. M. EWING.

The appeal of any book written before December 7 and addressed by a Briton at war to an American at peace has a certain quality of ancientry not absent from *The Strategy of Freedom* (Harper, pp. 114, $1.50), "an open letter to American youth" from Harold J. Laski. The values associated with Laski literary parentage are present—clear statement, close logic, calm conviction, fearlessness, forthrightness. The thesis of the tract is the need of defeating Hitler—essential to America as to Britain, and essential to the preservation of what we call civilization. We are not permitted to forget that Mr. Laski is a Communist; but he is willing to hold his principles in abeyance—not denying them—while urging a common cause for Britain, America, and Russia. He emphasizes that despite certain imperialistic aspects of the war, in the last analysis the future of liberalism depends on a British victory. "There is no middle way in this war, the choice of one side or another is inescapable. . . . A British victory does not mean the attainment of Utopia; but at least it prevents it from being wiped off the map. It leaves standing a world in which we have the right to dream: to maintain that right as a living principle is a long step toward the fulfillment of the dream." While addressed to the younger American generation, the appeal lies as well to any American who has been trying to think the situation through.—KEITH CLARK.

What may be called Catholic scholarship in the realm of political thought is well represented by a doctor's dissertation by Winston Ashley on *The Theory of Natural Slavery According to Aristotle and St. Thomas* (Edwards Brothers, Inc., Ann Arbor, Mich., pp. vii, 156) submitted to the University of Notre Dame. There is already rich treatment of the classical sources on the subject of slavery, yet there is merit in the direct comparison undertaken here, in the clear-cut refinements of thought brought out, in the breadth of the implications for the theory of the state as a whole. There is ample and careful documentation. The net result is not far from the conventional estimate of Aristotle on the subject of slavery. St. Thomas, though with his debt to the Philosopher underscored, and despite his compromise with the traditionalism of his day, suffers no diminution in this analysis of his "unerring insight" into the nature of servitude. As against the enslavement of totalitarianism, and as against the "liberalism which equalizes men by debasing the life of the city," Christian thought must solve the present problem of the state—the problem of "how to separate the servile, the prudential, and the contemplative functions in the life of the state," and of how to do so in a way that will recognize each of these claims. The reviewer regrets only that the debt of the Christian tradition to Stoicism seems not to be sufficiently recognized.—WALTER SANDELIUS.

RECENT PUBLICATIONS OF POLITICAL INTEREST BOOKS AND PERIODICALS

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AMERICAN GOVERNMENT AND PUBLIC LAW

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SOME SELECTED PHILIPPINE DOCUMENTS

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Observers have been quick to realize that the Philippines occupy a key position in the war between Japan and the United States. Prior to December 7, 1941, hurried steps were taken to prepare the insular territory for the coming crisis. The following publications of the Commonwealth Government, together with some analysis of their contents, throw light upon official activities in the Philippines during the uncertain period which preceded the state of war:

Bureau of Immigration, Office of the President, *Bulletins*, No. 1, Manila, 1940. Pp. 16.

This is the initial bulletin of the recently created Bureau of Immigration, and it explains the Philippine immigration law known as Commonwealth Act No. 613. As a document, it is of interest to students of international affairs, for the creation of an immigration service was one of the measures undertaken by the Commonwealth to prepare the Philippines for the responsibilities accompanying independence. Furthermore, it was regarded as an effective method for regulating the influx of Japanese into the Philippines, a problem which had caused much concern. The new immigration law, approved by President Roosevelt on August 26, 1940, and proclaimed by the President of the Commonwealth on September 3 of that year, was put into effect on January 1, 1941. The bulletin points out that all previous immigration laws applicable to the Philippines, as well as the special provisions concerning the admission of Chinese, are superseded by the legislation. It provides for immigration quotas, and aliens seeking admission to the Philippines are also subject to qualitative restrictions. In accordance with the fact that the American government still controls the foreign affairs of the Commonwealth until 1946, only United States consuls serving abroad may issue visas, and this means that the Philippine Bureau of Immigration cannot pass upon the question of admitting an alien until he arrives at a local port of entry.

Headquarters, Philippine Constabulary, *Rules and Regulations for the Enrollment, Training, and Instruction of Volunteer Guard Members.* Manila, 1941. Pp. 20.

The Commonwealth Government issued a number of publications, of which this is one, regarding the problems which had to be met in the case of an international conflict involving the Philippines. This particular pamphlet lists the physical and other qualifications for the volunteer guard service in the local communities. Loyalty to the Philippines and the United States is stressed as a prerequisite. The functions performed by the voluntary guards, varying from general police duty to demolition and repair work, are briefly outlined. Monthly reports are to be submitted by the provincial inspectors to the Chief of Constabulary on the organization, training, service, and efficiency of the volunteer guards in their respective administrative units. Charts are furnished which indicate the airplane markings of some of the major Powers, and sketches given of the various types of naval craft.

Civilian Emergency Administration, *Rules and Regulations for the Organization and Training of Volunteer Guards and the Air Raid Wardens Service and Air Raid Precautions.* Manila, 1941. Pp. 60.

The announced object of this publication was to instruct the civilian populace on what to do during air raids and other emergencies. It gives, in their entirety, the executive orders of the President of the Commonwealth (Nos. 335 and 337), the first calling for the creation of a civilian emergency administration, and the second promulgating rules and regulations for the organization and training of volunteer guards. Pp. 17–33 repeat the material on the latter subject which appears in the pamphlet circulated by the Constabulary. The next twenty-seven pages contain information about the "Air Raid Precautions Service." The duties of air raid wardens are defined, including matters relating to protective shelters, blackouts, gas attacks, and the handling of bombs. The last section deals with the conduct of individuals responsible for warning the population of approaching enemy aircraft.

Office of Publicity and Propaganda, Civilian Emergency Administration, *The Civilian Emergency Administration and Its Service to the People.* Manila, 1941. Pp. 48.

With a preface by Dr. Camilio Osias, this booklet proposes to familiarize the Filipino people with the Civilian Emergency Administration and its many-sided activities. It contains the following contributions by the chiefs of the component divisions of the C.E.A.: Charles H. Forster, Manager, Philippine Red Cross, "What to Do in Time of Evacuation and Distress"; Dr. Victor Buencamino, Food Administrator, "Food Production, Conservation, and Distribution"; Dr. Gregorio Anonas, Industrial Production Administrator, "Industrial Production"; Col. Henry Gilhouser, Fuel and Transportation Administrator, "Fuel and Transportation Service"; Alfredo G. Eugenio, National Air Raid Warden, "Air-Raid Protection"; Felipe Cuaderno, Director of Communications, "Domestic Electrical Communication System and the Present Emergency"; Dr. Camilio Osias, Director of the Office of Publicity and Propaganda, "Coöperation of Military and Civilian Elements."

Office of Publicity and Propaganda, Civilian Emergency Administration, *People's Guide in Emergency.* Manila, 1941. Pp. 59.

Intended for wide circulation, this booklet was published in Tagalog-English, Cebuano-English, Ilocano-English, and Hiligaynon-English. In addition to executive orders Nos. 335 and 337, it gives the text of No. 342 in the same series, which grants provincial governors the power of supervision and control over volunteer guard units in the provinces. It then presents the message of President Quezon to the National Assembly concerning the care of the civilian populace during times of war. Of special significance is the text of a radio address by Dr. Camilio Osias, presented on the "Voice of the Commonwealth" program, Station KZIB, Manila, May 23, 1941.

In an honest effort to prepare the Filipino people for an uncertain future, Dr. Osias emphasized the responsibilities of the Philippines in any war embracing the United States:

" . . . For good or for ill, the Philippines and the United States have common ties that bind them together. The two peoples must stand together in this emergency. They cannot fall apart. We cannot too strongly urge the thought upon our population that when the United States declares war, the Philippines, without question or wavering, will be in that war. . . ."

The Director of the Office of Publicity and Propaganda then proceeded to give detailed instructions with reference to the behavior of the public in an emergency. This radio presentation is supplemented by another of Dr. Osias' speeches delivered at Baguio, May 27, 1941, concerning the rôle of the school system in the program of the Civilian Emergency Administration. The concluding page, which can be detached, framed, and posted in a conspicuous place, is captioned in bold type: "EMERGENCY POINTERS FOR THE CITIZEN." It enumerates a series of suggestions to be followed by the people, namely, to beware of rumors; to keep calm, etc.

Office of Publicity and Propaganda, Civilian Emergency Administration, *What Every Filipino Should Know about Propaganda* (by José M. Hernandez and Ricardo C. Galang). Manila, 1941. Pp. 56.

The joint authors, both members of the faculty of the Philippine Military Academy, point to the importance of propaganda in modern warfare. A competent and readable survey of the various kinds of propaganda is given, followed by a discussion of the general methods of propaganda analysis and the ways in which propaganda is disseminated. The thesis is advanced that propaganda is a legitimate function of democracy, and that, in order to protect itself, the Commonwealth Government should give serious thought to this problem. Of special interest is the next section, "Ways of Counter-Propaganda," which evaluates the success of Japanese and other foreign propaganda in the Philippines, and makes suggestions concerning the effective control of this outside influence. The policies of England, France, Germany, and Italy in the handling of propaganda are examined with the purpose of deducing objective lessons which may be applied advantageously to the Philippines. The final chapter deals with the Civilian Emergency Administration and the participation of the people in its program.

Department of National Defense, Office of the Secretary, *Annual Report of the Secretary of National Defense to His Excellency, the President of the Philippines for the Fiscal Year 1940.* Manila, 1941. Pp. 75.

The Department of National Defense was organized on November 1, 1939, and this report covers the period ending June 30, 1940, or slightly less than eighteen months prior to the Japanese attack on Philippine territory. At the beginning, there is a convenient diagram showing the structural composition of the Department. The main body of the report throws much light upon the military position of the Philippines, especially in terms of preparations by the Commonwealth Government. For instance, it is pointed out that the European war interfered with plans for the expansion of the Offshore Patrol, which consists of swift torpedo boats. With two of these craft available, five others under construction in England were not delivered.

The vulnerability of the Philippines to an air attack is clearly recognized by the Secretary of National Defense: "The present war in Europe shows that the maintenance by a nation of a strong and efficient air force is absolutely essential. The building, therefore, of an air force in this country sufficiently large to command the respect of neighboring countries should be one of our immediate concerns." At the end are 14 appendices, presenting figures on the enlisted strength of the Philippine Army and similar matters.

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The American Political Science Review

VOL. XXXVI AUGUST, 1942 NO. 4

TIDES AND PATTERNS IN AMERICAN POLITICS

LOUIS H. BEAN
Washington, D. C.

As an aid in interpreting the outcome of the 1942 congressional election and subsequent general elections, this paper presents two basic studies that have been found very helpful in connection with the 1940 election.[1] One of these deals with the changes in political sentiment for the country as a whole, as shown by the long-time record of relative strength of the Democratic party in the two-party vote in congressional and presidential elections. From this long-time record it is possible to derive the characteristics of our political tides and an interpretation of the most recent changes as background for forthcoming elections. For example, the Democratic party attained its greatest strength on record in 1936, but in 1938 the tide turned against it, largely because of the 1937–38 business recession. Recovery by 1940 checked the decline.

The second study (in two sections) deals with the basic similarities between the pattern of political behavior for a given series of elections for the country as a whole and the political behavior of most of the states. From the "normal" relationships that can be developed between the national and state experience, it is possible to determine the influence of certain major issues, such as the isolationist and third-term issues in 1940. In that election, the Eastern and Far Western states voted more Democratic and the Midwestern and Great Plains states voted less Democratic than usual. These discrepancies are immediately traceable more to isolationist and anti-third-term sentiment than to any of the other issues.

I. POLITICAL TIDES

The existence of political tides in American history is usually taken for granted, but there has never been a simple statistical

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[1] Presented originally at the 1940 meeting of the American Political Science Association. Some of the material is drawn from the author's *Ballot Behavior; A Study of Presidential Elections* (Washington, D. C., 1940).

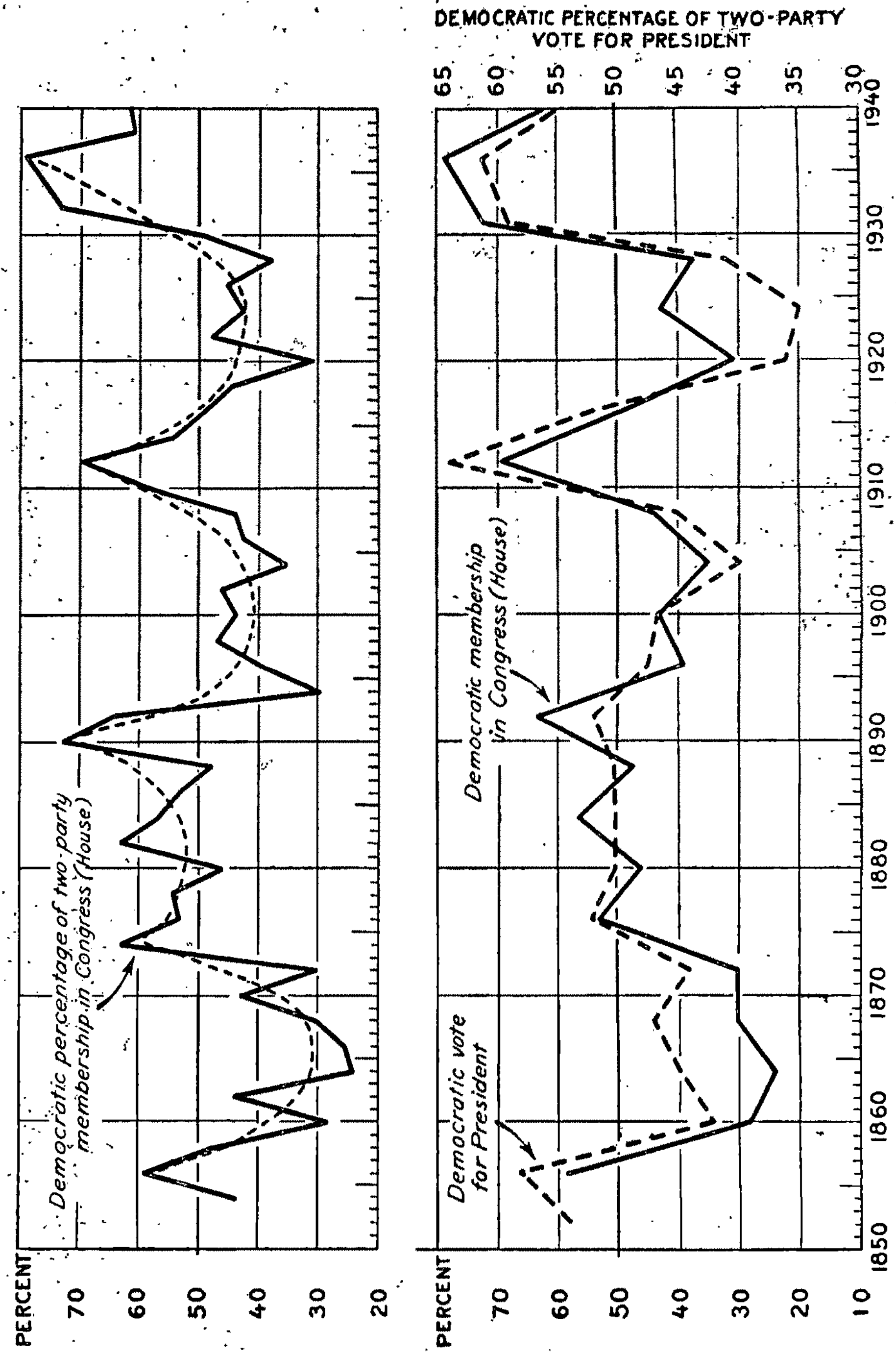

CHART I—POLITICAL TIDES.

demonstration. Consequently, various students of political affairs have held entirely different notions as to the duration of such tides, their rate of progress at a given moment, and the extent to which they are influenced by business, war, third parties, and other political factors. For instance, the duration of these tides has been variously given as eight, twelve, and twenty years, and some erroneously interpreted the rapid rate of change between 1936 and 1938 to mean the election of both a Republican president and a Republican Congress in 1940.

It is possible to obtain a clearer idea of these questions than is generally held, but to do so a measure of political tides must be established. In the Winter 1940 issue of the *Yale Review*, Professor Schlesinger reviews the duration of liberal and conservative tendencies in American politics. He finds that periods of liberalism, when the dominant legislative concern is with human issues, alternate with periods of conservatism, when legislation deals chiefly with property-rights issues. These periods have differed in duration but last on the average about fifteen to eighteen years. According to this finding, we are now in the midst of a liberal political tide, which began in 1931, and should therefore last through most of the 1940's.

But political tides may be measured more definitely than this, and more quantitatively. One measure may be conveniently derived from the records of party membership in Congress. Membership in the lower house, since it is subject to biennial elections, offers a more comprehensive statistical record than does membership in the Senate. Over the years, the total membership in Congress has increased in proportion with the total population. This growth factor may be taken into account by the simple device of taking either the Democratic or Republican percentage of the total membership of the House, thus obtaining a single series of figures which can be analyzed for the existence of tides and their characteristics. (See Table I and upper section of Chart I.)

Another measure of political tides may be derived from the figures showing the party percentages of the total popular vote for President. This series has only half as many episodes as the congressional elections series, and to that extent it is less adequate as a statistical measure of the nature of political swings. (See lower half of Chart I.)

A careful study of this record reveals the following significant facts:

TABLE I. DEMOCRATIC PERCENTAGES OF TWO-PARTY MEMBERSHIP IN LOWER HOUSE OF CONGRESS, 1856–1940
(arranged in 5 periods)

Period I		*Period II*		*Period III*		*Period IV*		*Period V*	
1856	58.7	1874	62.8	1890	72.4	1912	69.5	1936	78.9
1858	47.2	1876	53.2	1892	63.6	1914	54.5	1938	60.8
1860	28.4	1878	54.0	1894	29.7	1916	49.3	1940	62.2
1862	43.7	1880	46.1	1896	39.4	1918	44.6		
1864	24.1	1882	62.7	1898	46.8	1920	30.6		
1866	25.5	1884	56.5	1900	43.6	1922	47.9		
1868	30.0	1886	53.0	1902	46.2	1924	42.6		
1870	42.8	1888	47.4	1904	35.2	1926	45.1		
1874	62.8	1890	72.4	1906	42.5	1928	37.9		
				1908	44.0	1930	49.3		
				1910	58.5	1932	72.8		
				1912	69.5	1934	75.8		
						1936	78.9		

1. The year 1936 marked the highest position attained in Congress by the Democratic party. In that year, it had seventy-nine per cent of the two-party membership.

2. This may be compared with five previous dominant positions: in 1912, 1890, 1882, 1874, and 1856. The Democratic party had a membership of seventy and seventy-two per cent, respectively, in 1912 and 1890; sixty-three per cent in 1882 and 1874; and fifty-nine per cent in 1856.

3. The years of smallest Democratic membership were 1920, 1894, and 1864, the respective percentages being thirty-one, thirty, and twenty-four.

4. These high and low years, as well as the entire eighty-four-year period, reveal a general upward tendency in the Democratic proportion in Congress. During the 1850's and 1860's, this proportion fluctuated around an average of about forty per cent, but during the past two decades it has fluctuated around a higher "norm" of about fifty-five per cent.

5. The political pendulum has not swung with regularity, and does not furnish a very reliable indication of its probable course in the 1940's. Measured from peak to peak of Democratic dominance, there have been four major swings of the pendulum since 1854; the first swing took eighteen years, the second sixteen years, the third twenty-two years, and the fourth twenty-four years.

6. The first swing in this record took place between 1856 and

1874. The Democrats lost power with the depression of 1858 and returned to power with the depression of 1874. In this period, seven successive congressional elections went Republican.

7. The second swing took place between 1874 and 1890. During the years from 1874 to 1892, the Democrats continued to dominate Congress, however, and the pendulum never reached the Democratic low of the 1860's. In fact, this period may be described as having two eight-year swings instead of one sixteen-year swing, but with only two congressional elections in the entire period, those of 1880 and 1888, going Republican.

8. The third definite swing occurred between 1890 and 1912. It began somewhat earlier than the depression of the 1890's and ended with the Democrats coming back into power in 1910–12, following the depression of 1908 and the political and economic reform movements that this depression engendered. In this period, eight successive congressional elections went Republican.

9. The fourth swing was set in motion by the depression of 1914. and terminated when the Democratic party returned to power with the depression of 1932. In this period also, eight successive congressional elections went Republican.

Did the depression of 1938, which brought with it a marked loss in Democratic membership, from seventy-nine per cent in 1936 to sixty-one per cent in 1938 and sixty-two per cent in 1940, initiate a long-time swing that will carry the Democratic percentage in Congress below its present norm of fifty-five per cent? Will the Democratic party return to the low position it held during the 1920's, the 1890's, and the 1860's, or will it maintain the position it held during the 1870's and 1880's, when the pendulum failed to swing low? Any answer to this question as to the long-time prospect must be based either on pure guesswork, on astute political and economic analysis, or on prophetic intuition.

It may be of some interest to observe the extent to which this irregular record of political tides helped in judging how far the tide had swung between 1936 and 1940 before the results of the 1940 election were known. For this purpose, it was necessary to examine the course of development after each of the five major turning points. It was found that each of those turning points was associated with the development of a business depression, and that the rate of decline was influenced by the magnitude of the depression and the course of subsequent recovery. Between 1936 and

1938, a substantial recession in business activity set in. On the basis of the usual relation of changes in business to changes in the House membership of the major party in power, we predicted early in 1938 that the Democrats would lose ground and would have only sixty to sixty-five per cent of the membership after the November, 1938, election, compared with seventy-nine per cent in the 1936 election.[2] The actual result was sixty-one per cent.

This fairly accurate prediction, followed by business recovery in 1938–39, made it possible to forecast that the Democratic party would still control the House in 1940 and that a Democratic president would be elected. Many political observers, unaware of this quantitative relation between changes in business and change in political party position, over-estimated the momentum of the Democratic decline between 1936 and 1938, and therefore guessed wrong on the outcome of the 1940 presidential election.

The differences in the rate of decline after each turning point have been quite marked. After a loss of position in 1858, the Democrats lost even more heavily in 1860. This was due to a combination of two factors—a split in the Democratic party which brought two Democratic candidates into the field, and the social revolution which culminated in the Civil War. A similar loss in position developed in 1894, in the second congressional election after the 1890 peak, and followed the occurrence of a major depression. The course of the political tide after each of the other three swings was much more moderate. The loss of position experienced by the Democrats after the peaks of 1874, 1882, and 1912 was also associated with downward trends in business, but in two of the three cases (each involving the second congressional election following the peak years, which would correspond to the 1940 election following the 1936 peak year) the Democratic percentage fell only slightly, and in the third case it increased slightly. On a two-party basis, the Democratic membership declined ten points in 1876, but increased one point in 1878; it declined eight points in 1884, but only three and one-half points in 1886; it declined fourteen points in 1914 and only five points in 1916. On the average, the second change following these three peak years was about three points, in marked contrast to the decline of nineteen points in 1860 and of thirty-four points in 1894.

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[2] For a fuller statement of the relation of business to political tides, see *Ballot Behavior*, Chap. 10.

During the first part of 1940, most observers agreed that we were not facing social and economic conditions comparable to those of 1860 or 1894, and this led to the conclusion that the political pendulum (measured in terms of Democratic strength) had swung only moderately lower between 1938 and the spring of 1940. Had a congressional election been held early in 1940, the Democrats would still have had as much as fifty-seven or fifty-eight per cent of the two-party membership. This we took as a projection of the political tide up to June, 1940, before the European war and the choice of candidates for the presidential race began to have their effect.

The political pendulum has so far been described in terms of the Democratic percentage of the two-party membership in Congress. It may also be shown in terms of the Democratic percentage of the two-party vote for president. Over the years, there has been a very close correspondence between the directions taken by the swings in the presidential two-party vote and those in the party composition of Congress. The swings in the House membership percentages are as a rule greater than those in the presidential percentage. This general agreement is shown in the lower half of Chart I, where it should be observed that the scale for plotting the House membership percentages on one side differs from the scale used for plotting the presidential percentages on the other. In 1928, the Democrats cast forty-one per cent of the total two-party presidential vote and elected thirty-eight per cent of the two-party membership in Congress. In 1932, the presidential Democratic vote was fifty-nine per cent and the Democratic House membership was seventy-two per cent. In 1936, the respective percentages were sixty-two and seventy-nine. From this general correspondence of percentages we perceive that a Democratic House membership percentage of fifty-seven would ordinarily correspond to a Democratic vote for president of fifty-four to fifty-five per cent. This we took to be the most probable outcome of the 1940 election and may be compared with the actual vote of fifty-five per cent.

The fact that the Democratic party did not lose seats in the House in the 1940 election, while the popular vote for president declined from sixty-two per cent in 1936 to fifty-five per cent in 1940, offers a possible quantitative clue to the number of votes President Roosevelt lost because of the third-term issue. On only two other occasions in the past forty years have we had a marked discrepancy in the relationship between the Democratic percentage vote for president and the Democratic percentage in House membership. These were 1912 and 1924, three-party election years. The discrepancy in 1940 may be attributed to the third-term issue, with the effect of that historic challenge showing up in the votes cast for president but not necessarily for congressmen.

Had the normal relation between the congressional election and the popular vote for president prevailed, the latter would have been perhaps fifty-seven or fifty-eight per cent Democratic instead of fifty-five. This difference of two to three per cent we are inclined to associate with the third-term issue. We conclude from these figures that the Democrats, having lost ground as a result of the 1937–38 depression, would have won the election with a fifty-seven or fifty-eight per cent vote instead of sixty-two per cent in 1936, and that the actual vote of fifty-five per cent represents a net loss of two to three per cent of the total of fifty million votes cast. This suggests that about one to one and one-half million votes were cast against Roosevelt because of the third term.

The question naturally arises as to the position of the political tide in 1942 and thereafter. Are we to see in the 1940's a series of Democratic congresses, as in the 1880's but with less power than in the late 1930's, or will the course of the war and post-war developments bring a change in administration? In general, it may be said that anyone who can predict the tides of business and of battle can with a bit of statistical help also predict the course of the American political tide. For 1942, there is little doubt about the record level of industrial activity continuing as a favorable factor for the Democratic party. It is the course of the war, public reaction to war developments and to the domestic war programs, and the extent to which isolationist sentiment has disappeared since 1940, that will shape the outcome of the next election.

There are likely to be considerable misconceptions concerning the outcome of the 1942 election unless certain misconceptions concerning the 1940 election are cleared up. For this reason the balance of this paper is devoted to a fairly detailed analysis of the regional shifts in the 1940 election, leading to the location and measurement of isolationist and war sentiment influence in the 1940 presidential election.

The fact that only two New England and eight Midwestern states went Republican in the 1940 election has given rise to the remark that the center of Republicanism has shifted from the Northeast to the Middle West, and that farmers, presumably dissatisfied with the farm programs, voted against the Administration. Comments such as these do not touch on the basic feature of this regional shift in the two-party vote related to the war issue.

When an analysis of the 1940 election is made, state by state, taking into account the peculiarities of political behavior in the different regions, it becomes clear that the relatively greater Republican gains in the tier of states from North Dakota to Texas (including Missouri and Colorado) than in the East and Far West are associated in large part with the fact that people in the central part of the United States respond differently to war problems than do those of the Eastern and Far Western states. The 1940 shift was in fact roughly similar to that of 1916, and therefore does not mean that a permanent realignment has taken place.

The basis for these conclusions will be found in the following two sections of this paper. The first deals with political patterns for each state from 1896 to 1940, inclusive, and reveals the fact that for a given national two-party vote there are corresponding results in each of the states. The second deals with the actual two-party vote in 1940 for each state contrasted with what might be called "normal" for each state in view of the past correspondences between the national and state two-party percentages. In the differences between actual and "normal" results, there is clear evidence of a 1940 Democratic sag in the Midwestern Great Plains states of well-known isolationist sentiment.

II. REGIONAL PATTERNS OF POLITICAL BEHAVIOR

Our presidential elections have, as a rule, been two-party affairs. Since 1896, there have been only two major third-party episodes—one in 1912, when former President Theodore Roosevelt created the Bull Moose Progressive party, thereby bringing victory to the Democrats; the other in 1924, when the elder Senator La Follette ran as an independent candidate and increased the Republican margin over the Democratic. In other elections, at least of the past two generations, our political behavior has involved a shifting chiefly from one major party to another. Since it is this shifting between the Democratic and Republican parties that we are primarily interested in, we may resort to the simple device of showing the votes of one major party as a proportion of the total vote cast either for the two major parties combined or for all parties, major and minor. Most political commentators tend to deal with absolute numbers of votes cast, but where the population for the country as a whole or for a given state or locality is a changing one, the patterns of political behavior can best be seen in the percentages of the total vote cast for either of the two major parties rather than in absolute numbers.

In beginning our examination of the regional patterns of political behavior, let us note the major characteristics of the national presidential vote. This we can do readily by studying the fluctuations in the Democratic or Republican percentages either of the two-party vote or of the total vote.

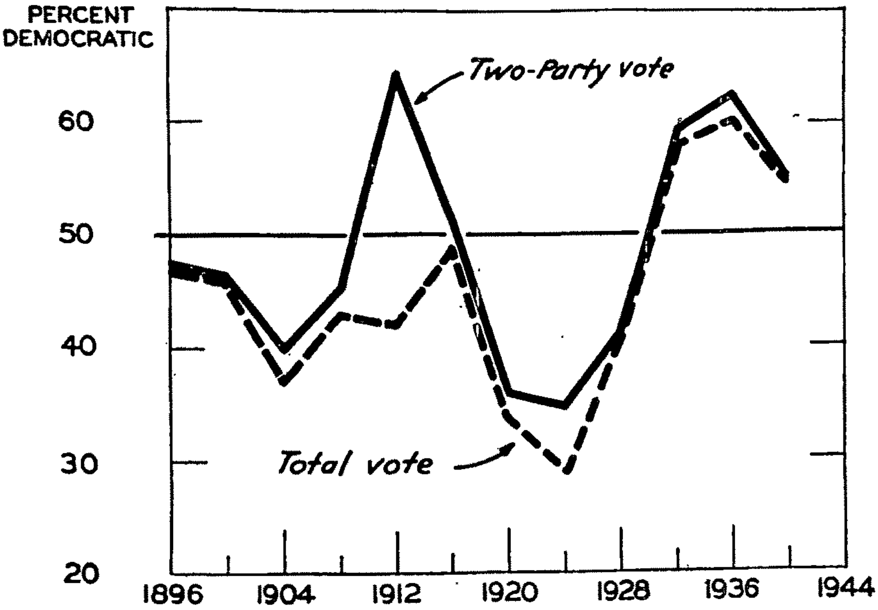

Chart II. Democratic Percentage of Two-Party and Total Presidential Votes, 1896–1940.

The two sets of comparable percentages for each election from 1896 to 1940 inclusive are shown in Chart II. The lowest Democratic years were 1904 and 1924; the highest, 1912–16 and 1932–36. The fluctuations, or major swings, shown in Chart I, constitute our typical forty-year pattern of political behavior.

On the basis of the total votes cast, the Democratic party has had only two majorities since 1896, one in 1932 and the other in 1936; but on the basis of the two-party vote, it has had four majorities, the other two being in 1912 and 1916. From the standpoint of winning an election, it is, of course, the majority in the two major party contests, state by state, that counts. In 1912, Wilson was elected with only forty-two per cent of the total vote, but sixty-four per cent of the two-party vote, and in 1916 he was elected with forty-nine per cent of the total, but fifty-two per cent of the two-party vote.

Ordinarily, there is relatively little difference in presidential elections between the political behavior shown by the two sets of percentages. The Democratic percentage of the two-party vote naturally is always larger than the Democratic percentage of the total vote whenever minor parties also engage in an election, but with the exception of the changes between 1908 and 1912 and between 1912 and 1916, the magnitude of the fluctuations is practically the same.

In this pattern of political behavior for the country as a whole, the outstanding features are the two cyclical swings. The Democratic tide fell to a low point in 1904, reached a peak in 1912 (or 1916 if measured by the percentage of total votes cast), fell to an even lower level in 1924 than in 1904, and rose to another peak in 1936. Between these two major shifts from one party to the other, the interval is about twenty years. Most of the states reveal this pattern, but some do not at all. Some follow the common pattern, but with wider swings between the low and the high years; others follow the common pattern with less violent swings.

The high lights of American mass behavior in the presidential elections of the past forty years will appear clearly after a close observation of the accompanying charts. The political record for eighteen states in the North East and North Central regions is contained in Chart III; the record for all the Western states is contained in Chart IV; and the record for the Southern states is given in Chart V. The Eastern and Western states shown in Charts III and IV have been arranged in groups of three on the basis of contiguity; that is, each group of three states forms a geographic unit.

The separate records for the eighteen Eastern and Central states repeat, by and large, the national cyclical pattern. All show a relatively small Democratic vote in 1900–04, a high one in 1912–16, another small one in 1924, and another high one in 1932–36.

A closer look will reveal that these cyclical swings vary in magnitude. The smallest variation prior to 1932 appears in Massachusetts, Rhode Island, and Connecticut; Maine, Vermont, and New

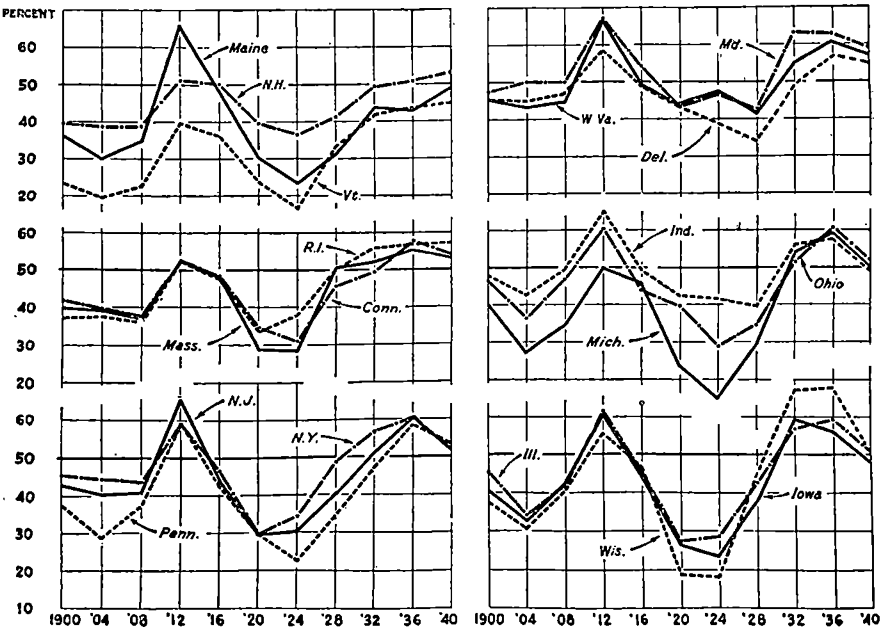

CHART III. PRESIDENTIAL DEMOCRATIC VOTE AS PERCENTAGE OF TWO-PARTY VOTE IN ELECTIONS OF 1900–1940, BY STATES.

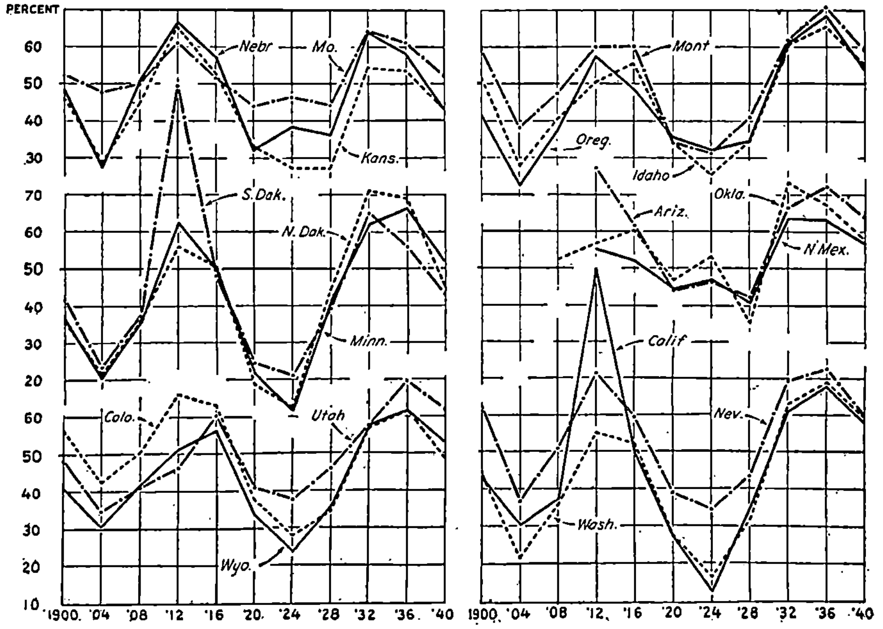

CHART IV. PRESIDENTIAL DEMOCRATIC VOTE AS PERCENTAGE OF TWO-PARTY VOTE IN ELECTIONS OF 1900–1940, BY STATES.

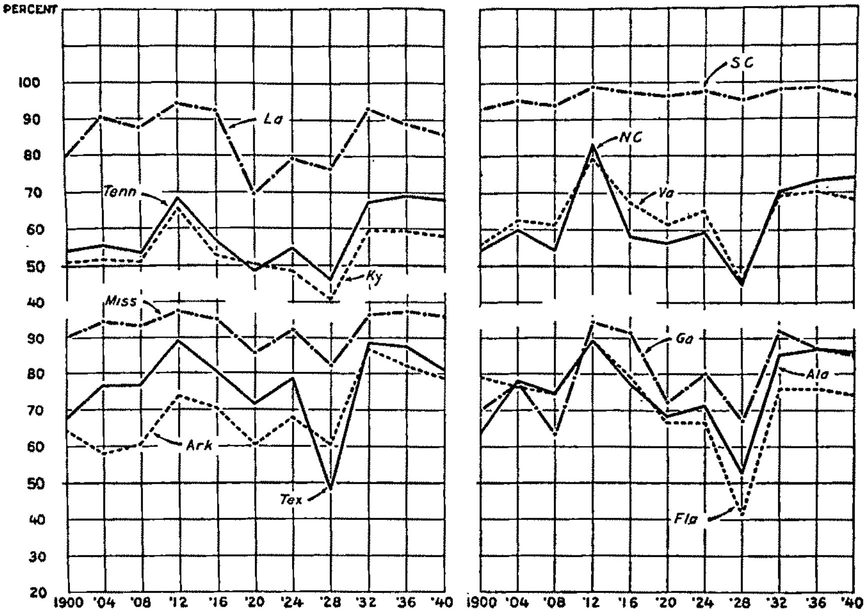

CHART V. PRESIDENTIAL DEMOCRATIC VOTE AS PERCENTAGE OF TWO-PARTY VOTE IN ELECTIONS OF 1900–1940, BY STATES.

Hampshire; and Maryland, West Virginia, and Indiana. The North Central states in this group of eighteen have shown the wider fluctuations between the two major parties, with Michigan leading in flexibility.

Some states are normally more Democratic than others; their fluctuations occur around a higher average Democratic percentage than in other states. Vermont voters have, on the average, been about thirty per cent Democratic, voters in Maine around thirty-five per cent, voters in New Hampshire, Massachusetts, Rhode Island, and Connecticut about forty per cent, and in West Virginia about forty-five per cent.

A general view of the records for the eighteen Midwestern and Western states contained in Chart III shows patterns like those in the eighteen Eastern and North Central states, but with two outstanding abnormalities—very high percentages in 1912 for South Dakota and California. In both of these states, the Republican party joined the Progressive (third) party of Theodore Roosevelt, giving to the Democratic party practically the entire vote of the Democratic-Republican total. In this Midwestern and Western group of states, the least variable is Missouri, and the most variable are the states in the Northwest and the Far West.

In the Eastern and North Central regions, all states showed peak Democratic percentages in 1912. This is also true for the Midwestern and Western states except in four states—Idaho, Utah, Wyoming, and New Mexico. These four reached the peak of their Democratic voting in that cycle in the 1916 election.

Another observation should be made with respect to the 1936 election. Not all states went more Democratic in 1936 than in 1932. In the Eastern and North Central states, the 1936 percentages were generally greater than in 1932, but Maine, Maryland, and more noticeably Iowa, were exceptions. The Midwestern and Western group of states show more cases of failure to surpass in 1936 the relatively high Democratic percentages of 1932. These cases are Kansas, Nebraska, Missouri, Oklahoma, North Dakota, and South Dakota. To some extent, this failure seems to have been a reaction from the exceptional swing to the Democratic party induced by the 1932 depression.

The record for the twelve Southern states is quite another story. Not only are the Democratic percentages there usually above fifty per cent, but there is very little correspondence with patterns shown in the records for the other thirty-six states. The most striking record is that for South Carolina, where the Democratic vote has in the last seven elections been ninety-five per cent Democratic or more. The most striking feature common to these states and differentiating their behavior from that of most of the other states is the sharp reduction in the Democratic vote in 1928—an expression of anti-Catholic sentiment against Alfred E. Smith, the Democratic candidate. In each of these twelve states, the 1928 percentages were lower than in 1924. In view of this Southern record for 1928, there is added significance in the fact that Kansas, Nebraska, Missouri, Oklahoma, Arizona, and New Mexico (see Chart III), and in the East, Maryland, Delaware, West Virginia, and Indiana (see Chart II) reached their low point in the political cycle of the 1920's in the year 1928 instead of 1924. In these states, as in the twelve Southern states, we may, even after so cursory a survey, suspect the play of anti-Catholic bias against the 1928 Democratic candidate.[3]

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[3] This specific factor and its power to distort the political patterns in different states, enhancing the Democratic percentages in some of the Northern states and reducing them in the Southern, is dealt with in *Ballot Behavior*, Chap. 9.

The results of the 1940 election fall in very consistently with the regional patterns of the previous forty-year record in the foregoing charts. The outstanding features are: an increase in the Democratic strength in Maine, New Hampshire, and Vermont; the relatively stable results throughout the South; and the relatively greater losses in the Midwestern states than in others. The greater Democratic losses between 1936 and 1940 in the Midwestern-Great Plains states should have been anticipated.

III. THE REGIONAL SHIFT IN THE 1940 PRESIDENTIAL ELECTION

In our statistical study of presidential elections from 1896 to 1936, we pointed out that in the war-time election of 1916 the Eastern and Far Western states voted more Democratic than normal.[4] After pointing out that the fifty-two per cent vote for President Wilson might have been anticipated on the basis of the course of the political tide and business developments after 1914, we concluded that the World War did not have any substantial influence on the national outcome of the 1916 presidential election. What influence the war did have is found in the extent to which the several states departed in that year from their usual relation to the national political temper as a whole. In that election, New England and the South Atlantic and Pacific states voted respectively seventeen per cent, four per cent, and six per cent more Democratic than normal; whereas the Middle Atlantic, East North Central, and West South Central states voted two to four per cent less Democratic than normal. It is now possible to say, in general, that this regional characteristic is also the central feature of the 1940 election. This common regional pattern of voting, when war problems predominate, stands out in the election results in spite of the fact that the psychological environment of the two elections was quite different, and that there were many differences in the way the two campaigns were conducted.

The nature of this regional difference in the response to such questions as war participation, conscription, and aid to Allies can be readily demonstrated by comparing the state results in the 1940 election with the way the different states might normally have voted. The national popular vote this year was fifty-five per cent Democratic. On the basis of past experience, it is possible to indicate what proportion of the total vote in each state might have been expected to be Democratic this year, corresponding to the national

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[4] See *ibid.*, p. 71.

TABLE II. DEMOCRATIC PERCENTAGE OF TWO-PARTY VOTE IN THE PRESIDENTIAL ELECTION OF 1940 COMPARED WITH "NORMAL"

	1940 Election *per cent*	*According to Bean Formula if U. S. is 55% Democratic* *per cent*	*Difference*
Ala.	86	82	+4
Ariz.	64	65	−1
Ark.	79	77	+2
Calif.	58	55	+3
Colo.	49	53	−4
Conn.	54	51	+3
Del.	55	51	+4
Fla.	74	74	0
Ga.	85	84	+1
Ida.	55	56	−1
Ill.	51	51	0
Ind.	49	53	−4
Iowa	48	47	+1
Kan.	43	47	−4
Ky.	58	57	+1
La.	86	85	+1
Me.	49	39	+10
Md.	59	58	+1
Mass.	53	48	+5
Mich.	50	48	+2
Minn.	52	53	−1
Miss.	96	95	+1
Mo.	52	57	−5
Mont.	59	61	−2
Neb.	43	52	−9
Nev.	60	63	−3
N. H.	53	47	+6
N. J.	52	52	0
N. M.	57	58	−1
N. Y.	52	51	+1
N. C.	74	68	+6
N. D.	45	54	−9
Ohio	52	53	−1
Okla.	58	62	−4
Ore.	54	59	−5
Pa.	53	49	+4
R. I.	57	51	+6
S. C.	96	98	−2
S. D.	43	47	−4
Tenn.	68	64	+4
Texas	81	84	−3
Utah	62	61	+1
Vt.	45	37	+8
Va.	68	69	−1
Wash.	59	56	+3
W. Va.	57	57	0
Wis.	51	54	−3
Wyo.	53	52	+1

Democratic average of fifty-five per cent. The actual state percentages in the 1940 election and the normal percentages determined from our formula are given in Table II, together with the differences between them. In twenty-four states, the actual percentages differ from those that might have been expected by two points or less. These small differences we may at the present assume as statistically insignificant. It is in the states where the actual vote exceeded the normal by more than two percentage points that we find the interesting regional cleavage.

There are thirteen states in which the Democratic percentage of the vote cast exceeded normal by more than two points. Eleven of these are in the East and two in the Far West. There are eleven states where the Democratic percentages were less than normal by more than two points, and nine of these are in the Middle West and Great Plains area and two in the Far West. These two groups of states are shown in Table III.

TABLE III. STATES IN WHICH THE DEMOCRATIC PERCENTAGES IN THE 1940 ELECTION DEPART BY MORE THAN TWO PER CENT FROM "NORMAL"

Calif.	+3	Nev.	−3
Wash.	+3	Wis.	−3
Conn.	+3	Colo.	−4
Ala.	+4	S. D.	−4
Tenn.	+4	Okla.	−4
Del.	+4	Ind.	−4
Pa.	+4	Ore.	−5
Mass.	+5	Kan.	−5
R. I.	+6	Mo.	−5
N. C.	+6	N. D.	−9
N. H.	+6	Neb.	−9
Vt.	+8		
Me.	+10		

The Great Plains region where the Democratic vote fell short of normal is farthest removed from the Atlantic and Pacific. Isolationist sentiment is known to center here. In the East, where the European war made us most jittery in 1940, we find that the Democratic vote exceeded normal by progressively larger percentages as we go from the Middle Atlantic states to the Canadian border. In New Jersey, for example, the Democratic percentage was about normal; in New York State, one point in excess of normal; in Connecticut, three points in excess; in Massachusetts and Rhode Island, five and six points, respectively; in New Hampshire, six points; in Vermont, eight points; and in Maine, ten points.

The fact that this regional shift in the 1940 election is closely related to the regional differences in the reaction to the problems and questions created by the war is clearly supported by the Gallup poll on the question of aid to Great Britain taken shortly after the election. The greatest opposition to aiding Britain is registered in the East Central and West Central states—thirteen and fourteen per cent, respectively. Only six to eight per cent were opposed in the New England, Middle Atlantic, and Southern states, and only ten per cent in the West. This regional distribution of sentiment against aid to Britain is strikingly similar to the regional shift in the Democratic strength in the recent election.

An examination of the state data raises several interesting questions. In the Corn Belt, there is the striking contrast between Iowa and contiguous states. Iowa, going Republican, was one point more Democratic than normal, but Missouri, going Democratic, and Kansas and Nebraska going Republican, were, respectively, five, four, and nine points less Democratic than normal. Iowa, relative to these states, was about seven points more Democratic. Does this mean that the relatively better economic situation in Iowa than in these other states prevented Iowa from swinging more definitely into the Republican column? Or does it reflect Mr. Wallace's popularity in his own state? A similar question may be raised concerning Oregon and Nevada. Does the fact that these states in the Democratic column fell short of their normal Democratic percentages reflect Mr. McNary's popularity and his drive against reciprocal trade treaties? This obvious explanation might be taken as the correct one without qualification were it not for the fact that in 1916 Oregon was the only Western state to go Republican. In 1940, it went Democratic, but substantially less so than might have been expected on the basis of past experience.

Other questions are raised by the contrasts between Michigan and Wisconsin, and between the New England states and New York and New Jersey. To what extent do the different proportions of the different foreign-born groups in Michigan and Wisconsin explain Wisconsin going three points less Democratic than normal and Michigan two points more Democratic? To what extent do the different proportions of the different nationalities in our voting population account for New Jersey and New York voting close to normal, while the New England states went from four to ten points more Democratic than normal?

It has been suggested that these regional differences, particularly between the central agricultural states and the industrial East and West, may reflect the economic betterment brought about by the European war and the defense program, but not shared by farmers in 1940. This appears a highly plausible explanation; yet the sharp contrasts in contiguous states prevent our accepting this economic argument as the predominant one. The true explanation is undoubtedly a combination of several sets of forces, namely, reaction to war issues and reaction to more jobs and more business, as well as accumulated regional differences in the attitude toward the Administration's recovery programs.

This, of course, means that the regional shifts we have pointed out cannot be looked upon as permanent. It can be shown that they developed after the spring of 1940, particularly after July. For example, the Gallup state-by-state polls during 1940 reveal clearly the progress in the development of the regional shift in response to the war development in Europe and the defense measures taken by the Administration.

Furthermore, the detailed studies we have made of the 1936–40 political shift in numerous counties reveal that the gains made by the Republican candidates were in direct correspondence with the importance of certain economic and nationality groups in the population of those areas. In so far as isolationist sentiment has disappeared in these areas, the recession in the Democratic political tide which set in after 1936 will be held in check in the 1942 elections. If the Democratic party gains seats in this election, it will be chiefly in the Middle West and North Central states.

ANGLO-AMERICAN POST-WAR COÖPERATION AND THE INTERESTS OF EUROPE

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Often it has been asserted that if the United States had stood by her allies after 1918 and joined the League of Nations, peace in Europe would have been secure. While this overstresses the point, it is certainly true that the lack of unity among the victors, both at Versailles and afterwards, deprived the world of anything like a center of coördination and leadership. Even the Concert of Europe of bygone days could claim greater authority than a League from which five out of seven great powers were either permanently or temporarily absent, and in which the two remaining powers, Britain and France, were rarely in agreement.

In view of this experience, it makes sense to regard continued coöperation between at least some of the important allies of this war, assuming the defeat of Hitler and his partners, as being an essential prerequisite for a more durable peace. If at least the two great English-speaking powers could form between themselves a solid partnership, so it is argued, would not their combined strength and their supremacy of the seas quite naturally attract other nations into their orbit and thus enable them to preserve the order and peace of the world? Their rôle is envisaged as a kind of enlarged replica of that which the British Empire fulfilled with no little success throughout most of the nineteenth century.

Whether an Anglo-American *bloc*, whatever its other merits or disadvantages, would live up to these expectations would depend to a large degree on the way other nations reacted. If they were so hostile to it as to sink their differences and to line up in opposition, the world might again be dangerously split into antagonistic *blocs*. On the other hand, if these countries found the new combination to their advantage, the United States and Britain might be in a position of effective leadership. When it comes, therefore, to deciding from the point of view of American interests whether this country should follow a course of close affiliation with Britain after the war, the repercussions of such a course in the countries of Europe—and also in other continents—would have to be carefully weighed.

Europe after this war—assuming that the United Nations succeed in defeating the Axis—will consist of a ring of lesser powers surrounding a temporarily impotent but potentially predominant Germany. This ring of powers will at the same time find itself pressed in between the Soviet Union in the East and, according to our assumption, an Anglo-American *bloc* in the West. It is with this constellation in mind that we must seek to analyze Europe's future relationship with its Western neighbors.

If the statesmen of the United States and Britain had nothing to go by except their guesses as to future emotional and subjective reactions of European public opinion, they would be forced to build on shifting sands. Not only is public sentiment toward the English-speaking countries highly diverse, but it is likely to undergo far-reaching changes once the war is over. There exist at present two distinct and diametrically opposed currents of opinion. The Germans and their friends in the Axis and in other European countries have, on the one hand, come to regard the Anglo-American powers as their worst enemies. They accuse these powers of interfering in the affairs of the Continent and of trying to keep it disunited and subservient to their interests. The opposition camp, of unknown but undoubtedly very extensive dimensions, on the other hand, expects that liberation and independence for the countries of Europe will come as a result of a victory of Britain and the United States. It would gladly today accept Anglo-American supremacy in place of the present Nazi domination.

Should Hitler be defeated, the first group, which will rightly or wrongly be accused of Nazi leanings, would certainly dwindle. But it would be a mistake to assume that it would vanish entirely, or to believe that it could not gain strength again. It might do so, for instance, if Europe should suffer severely from the aftermath of the war or from the evils of an unfortunate peace settlement. How tempting it would be to throw the blame for Europe's ills on the Anglo-American victors, or to appeal to the spirit of continentalism or Europeanism, which the Germans are seeking to awaken and spread among the people of Europe today, with what success we do not know!

The friends and supporters of the English-speaking countries would gain strength at first, while the feeling of gratitude toward the liberators and the common hatred of Nazism was still alive. But people's memories are short. Recriminations and disappointments are the rule between war-time allies. The small powers might feel that not enough of their independence had been restored; the liberated countries might not have been given enough opportunity for revenge. Among the masses who by their revolt might have aided the United Nations, resentment might spread if the future order were not as Socialist or as Communist as they had expected. In general, it is safe to assume that the initial friendly sentiments would cool off or disappear unless the benefits of coöperation with the great Western powers outweighed the advantages which any other course might offer.

This means that in the long run the effect of close Anglo-American partnership on vital interests of the European nations would be the decisive factor. The more these interests were served by such a power combination on the Atlantic, the more likely Europe would be to respond with friendly sentiments and policies of coöperation.

The interests of the various European powers naturally show wide divergence. But these powers do have a number of vital common interests—and interests, at that, which would be materially affected by the formation of an Anglo-American *bloc.* With the single exception of Germany, all the nations of Europe will after this war be interested in gaining as much protection as possible against any future recurrence of German aggression and expansion. All of them—this time including Germany—will be as keen as ever to retain their independence and to escape either Russian or Anglo-American domination of the Continent. All of them—still including Germany—will clamor for economic opportunities beyond the narrow limits of Europe and strive to regain the prosperity which an era of wars, revolutions, and depressions has so thoroughly destroyed. In what way, then, would the formation of an Anglo-American *bloc* tend to help or hinder the countries of Europe in attaining their objectives?

The answer is paradoxical, not only in the sense that Anglo-American coöperation carries with it dangers as well as advantages, but also because these dangers are due both to the strength and to the weakness inherent in this Anglo-American combination. The problem is how to restrain and at the same time supplement the power at its command.

A defeat of the Axis and Japan would automatically put the control of the oceans and sea communications in the hands of the two English-speaking sea powers. Whether, with the development of land-based air power, such supremacy of the seas could be made permanent and made to extend over inland seas like the Baltic or

Mediterranean, cannot be discussed here. Certainly, if their policies were closely coördinated, the United States and Britain should be capable of maintaining and protecting sufficient naval and air bases to be able at will to cut Europe's communications with the rich raw-material producing countries of the Southern Hemisphere. In so far as the European powers need access to these resources and markets for their welfare, as well as for their armaments, they would become dependent on the policies pursued by the Anglo-American *bloc.*

Such dependency could easily become the source of resentment and antagonism. British supremacy of the seas in the nineteenth century was accepted with relatively little opposition only as long as it went hand in hand with liberal trade policies. Liberalization of trade might again serve to justify and make acceptable the proposed joint Anglo-American control of the sea lanes. By promising to "further the enjoyment by all states . . . of access on equal terms to the trade and to the raw materials of the world," the Atlantic Charter is predicated on just such a policy. The difficulty in reconciling a liberal trade policy with the widely advertised needs of national planning cannot, however, be overlooked. Certainly British practice in the thirties and much of America's economic policy, even in the days of Hull's trade agreements, does not indicate strong popular support for a policy of liberalization.

The other countries would therefore be bound to be skeptical and unwilling to base their attitude merely on their confidence in British or American good faith and intentions. Furthermore, experience with Latin America has shown how difficult it is to bring weaker countries to accept the idea of one-power hegemony. But it has also shown under what circumstances these weaker powers are most likely to find themselves protected from any abuse of hegemonic power and by what means the predominance of one power can be made most acceptable to them.

The Anglo-American *bloc* might profit by this lesson and seek to apply the principles of the "good neighbor" policy to as many countries as possible. It might, for instance, by having others share common air and naval bases, turn its supremacy over the Atlantic into a coöperative control by all the Atlantic powers. As in the earlier case of Latin America, such a policy would not have to depend merely on Anglo-American generosity or fidelity to proclaimed principles. American and British self-interest, if interpreted wisely and far-sightedly, would require such a course. Any abuse of power on their part would threaten them with another alignment of hostile powers such as they are so desperately fighting today. And even before the crisis reached the stage it now has, air and naval competition and drives for colonial expansion would again disturb the peace of the world, and new efforts at economic self-sufficiency would undermine any prosperity.

That such dangers could arise shows that Anglo-American power, even if combined, is still limited and balanced. Europe, like Latin America, therefore, need have little fear for its economic independence. If it refused to place its trust in the governments and peoples of America and Britain, it could rest confident that a world balance of power would protect it from abuses which the Anglo-American *bloc* might otherwise be tempted to make of its privileged position.

There is more reason for Europe to be alarmed about the weaknesses inherent in an Anglo-American combination. Seen from Europe, Britain and the United States are islands separated by the ocean from the European mainland. What influence they could exert to assure military and political security to Continental powers would have to come largely as a result of the naval and aërial power which they could bring to bear across the waters. The limitations of such power are overlooked by those who advocate future Anglo-American hegemony on a world-wide scale. Navies alone, as this war and the previous one have shown, are not sufficient to bring victory, even when capable of establishing an effective blockade. The threat of cutting overseas communications would therefore also be insufficient to prevent trouble on the Continent or to protect the weaker countries from aggression. Even in the nineteenth century, when there were no air forces to hamper naval action, Britain's influence on the Continent was dependent on her ability to find allies there. Often she has been accused of intentionally keeping the Continental nations divided, and of using some of them to fight her battles for her.

It has been argued that if the Anglo-American *bloc* were to add air superiority to its naval supremacy, it could effectively police Europe and enforce peace. But there is little reason to believe in the practicability of such a plan. Unless Seversky be proved correct and the flying radius of fighter planes be increased beyond all present expectations, the powers of Europe cannot be controlled from airfields outside of the Continent, whether they be located on the British Isles or on the northern shores of Africa. Therefore, Anglo-American air superiority in Europe would require not only the possession of air bases on the Continent itself, but also enough military power available there to defend those bases. Unless the Anglo-American *bloc* were ready to establish permanent military garrisons of its own in Europe—hardly a tempting proposition—its air superiority would depend on whether it had allies on the Continent able and willing to put sufficient military power into the field.

There are other reasons why support from a strong land power would prove a prerequisite for effective Anglo-American influence and intervention on the Continent. If air enthusiasts believe that would-be aggressors could be deterred by the threat of air bombardment, they overlook the psychological difficulties standing in the way of police action by means of air forces. The Anglo-American *bloc* might threaten Germany with a bombardment of her cities and factories if she started to rearm. But what if the Germans called this bluff, trusting that the peoples in the democratic countries would not stand for such brutal acts in times of peace? It would certainly be an unenviable task to have to use air bombardments as a sanction for international agreements. Nor would countries in which Anglo-American air bases were situated feel secure unless they had superior land power on their side.

To deter the powers on the Continent from breaking the peace and to protect its bases of aërial and naval strength, the Anglo-American *bloc* would therefore be forced to widen its alignment to include one or more countries possessing land power on the Eurasian continent and thus not hampered by the limitations of insularity.

In a way, it is an advantage for the European countries that the Anglo-American *bloc* would need the help of Continental allies. It proves that there would be no danger of Anglo-American domination of the Continent. Also, the small countries, particularly those on the western fringe of Europe, which would be in greatest need of Anglo-American guarantees, would profit by the fact that, to some extent at least, the need for assistance would be mutual. This would give them some bargaining power and prevent them from becoming mere satellites or dependencies.

But there is another side to the picture. The only country on the Eurasian continent that has sufficient land power is the Soviet

Union. It is to her that an Anglo-American *bloc* would have to turn. Britain has done so already. In signing a twenty years' alliance with Russia, she has sought, certainly, not to substitute the Soviet Union for the United States, but to supplement whatever post-war agreement she may be able to reach with this country. To the European countries, such an alignment should be welcome, since an Anglo-American *bloc* alone would not offer them sufficient protection against Germany. Yet, on the other hand, those same countries might fear that Soviet assistance would some day degenerate into Soviet domination. There is no water barrier in the East as there is in the West. Much would depend, therefore, as far as their security is concerned, on whether the United States and Britain were able and willing to hold Russia in check.

This seems to create a perplexing dilemma. The same countries that would favor an alignment between an Anglo-American *bloc* and the Soviet Union as a means of keeping Germany in her place would, at the same time, expect to be protected against her. That was Poland's difficulty before the war. Fortunately, the contradiction is not insuperable. Countries that line up with Russia for the sake of their common defense and the defense of others can, at the same time, put restraints on their ally. It has even been contended that this is one of the most wholesome features of any alliance.

The recently signed Anglo-Soviet Treaty of Mutual Assistance would tend to confirm this argument. The two powers have committed themselves explicitly "to act in accordance with the two principles of not seeking territorial aggrandizement for themselves and of non-interference in the internal affairs of other states." These are self-denying limitations of the use of their respective power. If the two countries live up to this agreement, or are strong enough to force each other to comply with these principles, the countries of Europe will be safe from infringement of their independence and integrity. But they would not be the only ones to profit. Whether it be Britain or an Anglo-American *bloc* that enters upon such an agreement with the Soviets, the benefits are bound to be great for all the parties concerned. Without it, there would be danger that the peace of the world would be disturbed either by interference in Europe and subsequent revolt or by a clash between the Soviet Union and the English-speaking countries. Russia, feeling insecure, might insist on establishing air bases and garrisons on the territory of countries in Eastern and Southeastern Europe; soon the Anglo-American *bloc* would feel obliged to follow suit, and to protect itself by similar moves in Western and Southern Europe. The threat of being torn apart by rival powers in the West and the East would hang over Europe.

If, instead, the United States, Britain, and the Soviet Union should stand together and guarantee Europe against outside interference as well as against aggression from within, they would be creating between their respective realms a kind of cushion or buffer zone. Friction between them would be held at a minimum. But this does not mean that they should aim at the creation of a unified Europe or European federation. Neither the United States and Britain nor Russia would have any interest in doing so. On the contrary, a European *bloc* would naturally center in Berlin and its German heartland, and would in time renew the dangers against which the United Nations are fighting today. For the sake of their own security, both the English-speaking powers and the Soviet Union would be interested in protecting the independence of the countries that form the European ring and in aiding them to build up their own strength and defenses. The better these countries were able to check Germany themselves, the less they would need outside help and the less also would they be in a position of resenting their dependency on others.

To the objection that such a policy would lay obstacles in the path of European union and thus stand in the way of a healthy and necessary development, it must be said that the continued existence of a multitude of independent states on the Continent could not be blamed either on the Anglo-American *bloc* or on the Soviet Union. There is, so far at least, no indication that the European powers themselves desire to merge with the Germans into a supra-national union or federation. Only if they were left without any protection or denied the right of independence could Germany hope to draw them into her orbit. The Nazis have destroyed the chances of that for a long time to come. The Anglo-American *bloc* or the Soviet Union could unite Europe only by coercion such as Germany is applying today.

Thus, while an Anglo-American *bloc* would be interested in promoting a European set-up that should be both secure and well-balanced in itself, the countries of Europe would find the surest guarantee of their political independence, as well as of their economic independence (as mentioned earlier), in a balance of power between their great neighbors in East and West. Living under the shadow of Russian power, Europe's chief concern would be whether the Western powers were sufficiently strong to put a brake on the Soviets. Certainly they would feel that Britain alone could not hope to do so. They would, therefore, have every reason to welcome a solid combination of American and British power. This is true, at least, if we assume that the formation of such a *bloc* would strengthen Britain's hand on the Continent. Certain steps would have to be taken to assure this.

Whereas Anglo-American coöperation would draw the United States closer to Europe, it would at the same time tend to separate Britain farther from the Continent. An alliance is not a one-way affair. The United States, like the Dominions in the period after the first World War, would wish not to become unnecessarily entangled in European affairs. They would want Britain to limit her commitments in Europe as much as possible. The situation would be like that which existed between Britain and France after 1919. At that time Britain was seeking to prevent France from becoming too deeply involved in the affairs of Central Europe. While Europe might, therefore, find Britain's hand strengthened in matters concerning Western Europe, there might be greater reluctance on the part of Britain to exert influence in what would be for her—and even more for the United States—the remoter regions of the Continent. The speed and energy of her action in case of troubles in the Danubian region or the Balkans, for instance, might be lessened if she came to depend on the decisions of her distant, less interested, and far less immediately threatened, ally across the ocean.

The remedy most widely advocated for the effects of such remoteness carries the name of collective security. It calls upon nations to commit themselves to the defense of all victims of aggression without regard for geographical propinquity. But it is doubtful whether the American government and people would be willing either to make such general and far-reaching commitments or, if they did so, to live up to their pledges. It is hard to imagine a vote by the United States Senate approving what—if it were called by its proper name—would amount to an unconditional promise of military assistance to every potential victim of aggression.

The alternative to collective security does not need to take the form, however, of absolute aloofness from countries lying outside the zones of immediate vital interest. Within an Anglo-American *bloc,* Britain and the United States might undertake to serve as guarantors of peace in regions in which the other partners to such a *bloc* would not be ready to commit themselves. Thus, Britain might be given a kind of mandate to offer guarantees to countries in Central and Southeastern Europe. Being allied to Britain, the United States and the Dominions would be obliged, however, to support Britain if in consequence of her assistance to those countries her own security became endangered. While this would create an indirect and conditional "entanglement" for the whole *bloc,* it might still be more readily acceptable than any blanket commitment on behalf of *all* of Europe. Similar "mandates" might in turn be given to the United States and the Dominions in regard to regions more important to them than to Britain.

Our discussion has shown that, notwithstanding many difficulties, the interests of an Anglo-American *bloc* could be made to harmonize with those of Europe's ring of powers. Whether Germany, too, could be brought to see advantages in a set-up such as we have envisaged would depend on many circumstances, and would require separate treatment. This, and many other aspects of the problem, would have to be considered before all the effects of a close Anglo-American affiliation on both American interests and world peace could be evaluated.

One further point may be noted. Throughout, we have been assuming that the post-war world will continue to be governed by the national policies of the great powers, and that these policies will be dictated primarily by what these countries believe to be their vital interests. For this reason, the emphasis has been on the strength and weakness of nations and on the distribution and future use of power. If, instead, we had postulated the establishment of a world government or world federation, the relation between Europe and an Anglo-American *bloc* would have appeared in a totally different light.

But to assume the continued predominance of considerations of the national interest does not imply that the United States and Britain, once they decided to pool their strength and resources, would be left with no choice of policy or would be condemned to adopt an egotistical *Machtpolitik.* We have tried, on the contrary, to show how much their own security, as well as that of others, would depend on whether they had the wisdom and far-sightedness to combine firmness with self-restraint and to include others in their partnership.

We can go further and say that an Anglo-American *bloc,* with its power and privileges, would be certain to lack popularity and support if it did not prove itself capable of promoting world peace by helping to develop effective international organization where it was needed. Given the temper of the American people, it may even prove impossible to organize Anglo-American coöperation—to say nothing of Russo-American coöperation—except under the more universal auspices of some league or association of powers.

Yet it would be naïve to believe that even the most promising and generous Anglo-American plans for international government or coöperation would find much sympathy or credence in Europe unless at the same time the use which—league or no league—an Anglo-American *bloc* was expected to make of its power augured well for the interests of the European countries.

STATE CONSTITUTIONAL LAW IN 1941–1942*

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I. GOVERNMENTAL ORGANIZATION AND PROCEDURE

Executive Reorganization. In long and highly controversial opinions, the majorities of the Indiana and Louisiana supreme courts invalidated state administrative reorganization plans of a type whose constitutionality might conceivably have been treated as political questions. The Indiana controversy grew out of the repeal, over a Democratic governor's veto, of the Executive-Administrative Act of 1933. In place of an administration consolidated into eight departments, each directly responsible to the governor, the Republican legislative majority substituted an organization of four departments—state, audit and control, treasury, public works and commerce—each headed by a hybrid board composed of the governor and two elective administrative officers, or one administrative officer, the governor, and the lieutenant-governor. Existing tenures were terminated and powers of appointment were expressly given to the respective three-man boards.

Upon adjournment of the legislature, this sweeping "reorganization" was immediately attacked on the grounds that it wrested authority from the governor and unconstitutionally delegated executive power to ministerial officers. Operation of the acts was enjoined in the lower court. On appeal, a divided supreme court declared the repealing statute unconstitutional. The heart of the majority opinion was the syllogism that under the Indiana constitution executive power, "including the administrative," is vested, not in the executive department, but in the governor; that the appointive function is an exercise of the executive power; and hence only the governor may appoint. The decision thus rested on a rigid separation of powers, and derived aid and comfort from Chief Justice Taft's opinion in Myers v. United States.[1] To reach its conclusion, the majority was obliged to distinguish and overrule numerous Indiana precedents and to concede that in practice the appointive power was one exercised by all three departments.

An able dissenting opinion exploited these inconsistencies and roamed even more widely through state and federal precedents. Without approving the governmental policy of the statutes, the opinion denied that the appointive power was exclusive or that the rule of the Myers case was either binding or historically sound. Other critics were quick to emphasize that the Indiana constitution nowhere grants express power of appoint-

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* Howard Jay Graham, research fellow in political science, University of California, gave invaluable aid in the preparation of this article.

[1] 272 U.S. 52 (1926).

ment to the governor, and to point out that the rule is almost universal that appointive power is not vested in the governor in the absence of constitutional or statutory grant of power.[2] The immediate effect of this decision was to leave the entire administrative organization in a state of chaotic uncertainty, with doubt raised not only as to the validity of other acts, but as to whether the administrative organization automatically reverted to that which existed prior to, or after, the Executive-Administrative Act of 1933. Viewed from almost any angle, the situation was unfortunate. It would seem that in days of crisis, popular government deserves better of its friends.[3]

The Louisiana decision was equally striking. Here for the first time the state supreme court declared unconstitutional a constitutional amendment. This amendment had been adopted almost unanimously by the legislature and had been approved by popular vote. It was in fact the keystone of Governor Jones' reform program. Yet the court permitted its validity to be challenged by an ordinary taxpayer's suit.[4] Executive reorganization, a unified system of state finances, and an administrative and financial code were held defective on the technical grounds, first, that the legislature, in contravention of an explicit constitutional provision, had failed to designate the election at which the amendment was to be submitted, and second, that the amendment embraced more than one subject.

Had the court confined itself to the first point, little might have been said in criticism other than that courts exercise wide discretion in passing on obvious oversights,[5] especially where enactments have been ratified by popular vote. However, the majority proceeded with a minute examination of the ordinance and undertook to show that such "distinct and separate subjects" as financial administration and executive reorganization had been compounded in the same measure; moreover that these could not logically be viewed as parts of a single reform or plan. In conclusion, the majority stressed that the popular margin in favor of the amendment had been "only 6,667."

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[2] *Indiana Law Rev.*, Vol. 17, p. 139, n. 49 (Dec., 1941).

[3] Tucker, Secretary of State, *et al.* v. State *et al.*, 35 N.E. (2d) 270 (Ind., June, 1941). A Florida statute that provided for appointment of certain state officers by the governor "by and with the consent of the senate" was sustained despite the provision of the constitution that authorized the legislature to provide either for the election of the officers or for their appointment by the governor. Advisory Opinion to Governor, 2 So. (2d) 372 (Fla., May, 1941).

[4] Formerly, and prior to the United States Supreme Court's decision in Frothingham v. Mellon, 262 U.S. 447 (1923), the Louisiana court had held that a taxpayer's interest was too remote to permit him to challenge the constitutional validity of legislation. This view, reversed in Borden v. Louisiana Board of Education, 123 So. 655 (1929), was again repudiated in the present case.

[5] Of the 28 proposed amendments voted on at the same time, only one lacked the clause designating the election date.

The chief justice concluded a forceful dissenting opinion with the observation that "the Constitution of the United States guarantees to every state in the Union a republican form of government." The action of the majority seemed to him likely to tax the people's understanding of President Lincoln's high resolve regarding popular government.[6]

Executive: Public Officers. The provision of the Kentucky constitution which limits salaries of all public officers except the governor to a maximum of $5,000 a year operated to prevent the Louisville director of finance, whose salary was $4,999.92, from serving as accountant and financial adviser of the Louisville housing authority at a salary of $3,600. The argument that the latter job was an "employment" failed to impress the court.[7]

A ruling on the provision in the Florida constitution against multiple office-holding was neatly side-stepped by the state supreme court. A statute which made the chairman of the state road department a member of the state planning board was held merely to have imposed additional duties on the chairman.[8]

Executive: State Officers in National Service. The demands of defense and war have called for a reëxamination of certain phases of the law of public officers.[9] Does a state constitutional provision against dual, i.e., state and national, office-holding serve to terminate one's state office on one's being called into the armed forces of the United States? Would the same rule apply to a state officer accepting a non-military appointment under the national government? The answers have varied. The Pennsylvania supreme court held that an officer in the reserve corps called into active service automatically forfeited any state office he held at the time of the call.[10] A contrary decision was handed down by the California supreme court. Under the state constitutional provision that "no person holding any lucrative office under the United States, . . . shall be eligible to any civil office of profit under this state . . . ,"[11] a taxpayer brought suit to have the office of chief engineer of building and safety of Los Angeles county declared vacant on the ground that the occupant was on leave, although without pay, while serving as major in the Marine Corps Reserve called to active duty. The court unanimously rejected the view that service with the United States constitutes a forfeiture of the county office. The fact that the legislature had passed emergency statutes to protect the civil rights of persons in military or naval service caused the court to view the statute liberally. The object of the constitutional provision was to prevent dual office-holding by one person under two separate governments. Thus, while the grant of a leave of absence did not terminate the engineer's appointment, it did serve to suspend his occupancy of the office. Consequently there was no constitutional incompatibility, and the taxpayer's suit failed.[12]

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[6] Graham *et al.* v. Jones *et al.*, 3 So. (2d) 761 (La., June, 1941). With regard to the constitutional powers of the legislature to amend or repeal a popularly initiated law, see State *ex rel.* Strutz, Attorney-General, v. Baker, State Auditor, *et al.*, 299 N.W. 574 (N.D., July, 1941).

[7] City of Louisville v. German, 150 S.W. (2d) 931 (Ky., June, 1941).

[8] Advisory Opinion to Governor, 1 So. (2d) 636 (Fla., April, 1941). See also Jackson, Mayor, v. Cosby *et al.*, 22 A (2d) 453 (Md., Nov., 1941).

[9] The California supreme court declared that references in the constitution to "officer" refer to a governmental officer. "But it does not necessarily follow that military . . . officers are governmental . . . officers." Martin *et al.* v. Riley, State Controller, 123 P. (2d) 488 (Cal., Mar., 1942).

[10] Commonwealth *ex rel.* Crow v. Smith, 23 A (2d) 440 (Pa., Jan., 1942). The court distinguished Kennedy *et al.* v. Cook, 146 S.W. (2d) 56 (Ky., Dec., 1940), mentioned in the 1941 state constitutional law survey in this REVIEW, Aug., 1941, p. 690. See also 132 A.L.R. 251.

[11] Cal. Const., Art. IV, Sec. 20.

A decision of the Wisconsin supreme court was of special interest. The state treasurer refused to favor a warrant drawn for the salary of Clarence A. Dykstra as president of the University of Wisconsin. He contended that Mr. Dykstra's position as administrator of the Selective Training and Service Act of the national government was constitutionally incompatible with his state position. In an action brought by the state attorney-general, the supreme court upheld Mr. Dykstra's right to occupy both positions. Of the two, the national employment alone was held to be a public office within the meaning of the state constitution. The president of the University was to be regarded as an employee of the state, not as an officer. It was conceded that the president became *ex officio* a member of the Board of Regents of the University, and that an appointed regent "might be" an officer. But the court saw no significance in the term "*ex officio*"—the president of the University was merely an employee of the state.[13]

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[12] McCoy v. Board of Supervisors of Los Angeles County *et al.*, 114 P. (2d) 569 (Cal., June, 1941). The court in the Smith case discussed above examined this opinion of the California court, but looked upon it as exceptional and refused to follow it. A statute which provided limited compensation to state or local officials called into national military or naval service was sustained by the New York Court of Appeals. The judges apparently were dubious whether "war service to the nation in itself alone" constituted a state or municipal purpose, but they upheld the law as a constitutional device similar in purpose and character to recently sustained pension systems. The court declared that the legislation granted no gratuities; rather, it was devised to secure the continuance in office of able officials, and to recognize and reward fidelity of service. Hoyt v. Broome County (Bennett, Attorney-General, Intervenor) 34 N.E. (2d) 481 (N.Y., May, 1941).

[13] Martin, Attorney-General, v. Smith, State Treasurer, 1 N.W. (2d) 163 (Wis., Dec., 1941). The Texas supreme court held that a member of the Texas legislature who was also a member of the National Guard did not lose his constitutional per diem compensation as a legislator on being called into active army service. A statute that limited the compensation of state officers and employees in military service to twelve days in any year was held not to apply to legislators. Spears v. Sheppard, 150 S.W. (2d) 769 (Texas, April, 1941).

Executive: Governor's Veto Power. A concurrent resolution of the Michigan legislature designed to put into immediate operation statutes which had contained no "immediate effect" clauses was held invalid on the ground that it deprived the governor of power to consider whether the legislation could properly be classed as emergency legislation at the time he granted his approval.[14]

Executive: Governor's Power to Pardon: The Iowa supreme court held a statutory provision which established "good moral character" as one of the qualifications for civil service employment, and which disqualified therefrom any person convicted of a felony, to be unconstitutional as applied to one who had received a full pardon. In a divided opinion, the court held that the constitution vests the pardoning power exclusively in the governor, and that the result of the statutory provision was to establish "a conclusive presumption that a person . . . convicted of a felony is not of good moral character." Furthermore, the act imposed legal consequences and disabilities from which plaintiff had been exempted. The pardon "not only removed the statutory penalties prescribed for the crime of larceny, but also prevented other disabilities and penalties from attaching because of the fact of conviction."[15]

Legislature: Reapportionment. Efforts to force legislative reapportionment failed again in Illinois. The state supreme court ruled that a suit to restrain the expenditure of election funds was an attempt to have the court pass on a purely political question. Commands of the constitution relating to freedom and equality of elections were deemed to be addressed to the legislature and, hence, were judicially non-enforceable. The 1901 Congressional Apportionment Act which created the present districts could not be rendered invalid by population shifts.[16]

Legislature: Salaries. State courts divided in their attitudes toward legislators' efforts to provide additional compensation for themselves in the face of seemingly clear constitutional restrictions against increases in legislative pay. An Ohio law that provided each member with a weekly travel allowance of five cents a mile to and from his place of residence regardless of his actual expenses was sustained by an appellate court despite the constitutional declaration that "the members . . . of the General Assembly shall receive a fixed compensation, to be prescribed by law, and no other allowance or perquisites, either in payment of postage or otherwise; and no change in their compensation shall take effect during their term of office." The seeming repugnance between law and constitution was reconciled by holding the "travel allowance" to be a part of the legislators' compensation.[17]

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[14] United Ins. Co. v. Rushton, Attorney-General, *et al.*, 1 N.W. (2d) 510 (Mich., Jan., 1942). The validity of two vetoes that were imposed by the president of the senate as acting governor in the absence of both governor and lieutenant-governor was unsuccessfully challenged in Walls *et al.* v. Hall, Secretary of State, 154 S.W. (2d) 573 (Ark., Oct., 1941).

[15] Slater v. Olson, Chairman, Civil Service Commission *et al.*, 299 N.W. 879 (Iowa, Sept., 1941). Cf. Prichard v. Battle, director of division of motor vehicles, in which the denial of a license to operate a motor vehicle was held to be neither a penalty nor a part of punishment within the meaning of the state constitution. Thus, a full and complete pardon granted to the operator of a motor vehicle whose driver's license had been revoked following his conviction of a crime in connection with the operation of an automobile did not operate to restore his right to drive an automobile. 17 S.E. (2d) 393 (Va., Nov., 1941).

[16] Daly *et al.* v. Madison County *et al.*, 38 N.E. (2d) 160 (Ill., Nov., 1941). For a discussion of the mathematics of legislative reapportionment, see Shaw *et al.* v. Adkins, Governor, *et al.*, 153 S.W. (2d) 415 (Ark., July, 1941).

In contrast, the Idaho supreme court made short work of a statute which attempted to provide living expenses for legislators while in state service.[18] The case is doubly interesting in that while the Idaho law was modeled on that of Washington sustained the year before, the court took no notice of the precedent.[19]

Legislature: Title and Subject of an Act. A Kentucky statute whose title related only to custody and maintenance, but whose body contained a provision empowering counties to acquire property was held to be defectively titled.[20] Similarly, an act of the Louisiana legislature which created the state crime commission and empowered it to investigate government departments, commissions, and boards, and which also authorized the supreme court, on request of the governor, to transfer judges, was invalidated on the same ground.[21] Yet a general governmental appropriation bill which provided for the issuance of certificates of indebtedness for the construction of buildings at a state hospital, which increased state liquor taxes, and which limited the sale of wine to licensed liquor stores was held to be within the constitutional requirement that "every act . . . shall relate to but one subject."[22]

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[17] State *ex rel.* Harbage v. Ferguson, Auditor, *et al.* (Court of Appeals) 36 N.E. (2d) 500 (Ohio, July, 1941).

[18] Peck v. State, 120 P (2d) 820 (Id., Dec., 1941).

[19] State *ex rel.* Todd *et al.* v. Yelle, State Auditor, 110 P (2d) 162 (Wash., Feb., 1941). See this REVIEW, Aug., 1941, p. 685.

[20] Kenton County *et al.* v. City of Covington, 154 S.W. (2d) 540 (Ky., Sept., 1941).

[21] Stewart *et al.* v. Stanley, Attorney-General, *et al.*, 5 So. (2d) 531 (La., Dec., 1941). The constitutional requirement that an act of the legislature shall not embrace more than one object is not applicable to joint resolutions proposing constitutional amendments. Guillory v. Jones, Governor, *et al.*, 1 So. (2d) 65 (La., Mar., 1941). In the case of Dornacker v. Strutz, Attorney-General, a North Dakota "juke box" tax act was held unconstitutional because the reference in the title of the act to "amusement games" was not broad enough to cover "juke boxes." 1 N.W. (2d) 614 (N. D., Jan., 1942). See also Beckham County Excise Board v. Lowdin, 117 P. (2d) 109 (Okla., Sept., 1941) invalidating a section of a statute whose title referred only to population figures based on the 1930 census but whose body related to succeeding censuses as well; and State. v Beaver Portland Cement Co., 124 P. (2d) 524 (Ore., Apr., 1942) voiding a statute that prohibited obstructions in the Rogue River but failed to mention the fact in the title.

Legislature: Local and Special Laws. Acts of the 1941 West Virginia legislature which reopened previously rejected claims against the Workmen's Compensation Fund were invalidated as special legislation and as an infringement of judicial power.[23] Indiana's Skip Election Law, which provided that city elections in all except cities of the first class should be held in 1943 and in each fourth year thereafter, rather than in 1942 and each fourth succeeding year, was also held void. The fact that Indianapolis alone was thus excepted was held to make the act special legislation.[24]

Judiciary. Whether municipal judges and justices of the peace who receive fees only in event the defendants tried before them are found guilty can be said to have a pecuniary interest in their verdicts sufficient to warrant disqualification is a question which has been variously answered in recent years. Weighing Tumey v. Ohio[25] against contrary holdings by the courts of Georgia and Texas, the supreme court of Florida rendered a decision which required modification of the fee system in that state. Public policy rather than a specific constitutional provision was held to invalidate the conditional fee.[26]

The Electorate. Should an absolute immunity from actions for libel and slander, similar to that granted legislators, be extended to appointees who prepare the official arguments on referenda? Should such an immunity extend to an allegedly defamatory statement, "This 310-million-dollar pension plan is sponsored by Herbert Bigelow of Cincinnati, paid lobbyist for the Single Tax Movement?" Both of these questions, raised by a suit against the authors of the official arguments opposing the defeated Bigelow amendments, were in effect answered affirmatively by the Ohio supreme court. The state constitutional provision granting immunity to legislators was deemed "to recognize rather than restrict the existence of occasions of absolute privilege." Since the function of preparing and circulating arguments was analogous to legislative debate, a like immunity was recognized.[27]

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[22] Crouch v. Benet *et al.*, 17 S.E. (2d) 320 (S.C., Nov., 1941).

[23] Truax-Traer Coal Co. v. Compensation Commissioner *et al.*, and five other cases, 17 S.E. (2d) 330 (W.Va., Nov., 1941). A North Carolina statute requiring county officers of counties of less than 85,000 population to bring suit for claims within six months was also held to offend a special legislation clause. The exemption of the four larger counties was deemed arbitrary and unreasonable. Gillespie v. Pickens County, 14 S.E. (2d) 900 (N. C., May, 1941). See also Anderson, County Judge, *et al.* v. Wood, Sheriff, 152 S.W. (2d) 1084 (Texas, May, 1941), and this REVIEW, Aug., 1941, pp. 703–4.

[24] Ettinger v. Studevent, 38 N.E. (2d) 1000 (Ind., Jan., 1942).

[25] 273 U.S. 510 (1927).

[26] Rollo v. Wiggins, 5 So. (2d) 458 (Fla., Jan., 1942). The supreme court of North Carolina, ruling upon substantially the same question, found no denial of due process, and distinguished Tumey v. Ohio. *Ex parte* Steele, 18 S.E. (2d) 132 (N.C., Jan., 1942).

Stanley, Attorney-General, v. Jones upheld the removal from office of a Louisiana district judge for "gross misconduct" not connected with the office. 2 So. (2d) 45 (La., April, 1941).

Provisions of the state constitution establishing the initiative and referendum were construed strictly by the Massachusetts court. In an advisory opinion, it was held that the legislature cannot authorize the slightest change in the text of a proposed law contained in an initiative petition, not even to the extent of adding a title to the proposal where the authors of the petition failed to provide one.[28]

The Illinois supreme court, on the other hand, showed more liberality in interpreting the section of the state constitution relating to direct legislation. Although of the opinion that the secretary of state erred in including on the ballot information to acquaint the voters with the meaning of a proposition to be voted upon, the court, nevertheless, held that his error "was on the side of giving the voters more information." Since the information had not been designed to mislead the voters, there was no ground for declaring the election void.[29]

High courts of Maine and Louisiana disagreed on the question whether the legislature may enact a law anticipating the adoption of a proposed constitutional amendment and contingent upon such action. An advisory opinion of the Maine court denied the legislature such power.[30] The Louisiana supreme court, on the other hand, declared, in support of a practice of some thirty years' standing, that the insertion of a clause in a proposed constitutional amendment for the purpose of ratifying then existing legislation results in giving retroactive effect to the legislation which at the time of its passage was unconstitutional.[31]

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[27] Bigelow v. Brumley *et al.*, 37 N.E. (2d) 584 (Ohio, Nov., 1941).

[28] Opinion of the Justices, 35 N.E. (2d) 676 (Mass., June, 1941). The decision of the secretary of state on the validity of a referendum petition may not be reviewed and set aside by the courts. Moses, Governor, v. Thorson, Secretary of State, 299 N.W. 305 (N.D., July, 1941).

[29] Knappenberger v. Hughes, Secretary of State, *et al.*, 35 N.E. (2d) 317 (Ill., June, 1941). For a decision denying county commissioners power to spend county funds in the interest of a proposed constitutional amendment, see State *ex rel.* Bell *et al.* v. Board of County Commissioners of Beadle County *et al.*, 300 N.W. 832 (S.D., Nov., 1941).

[30] *In re* Opinion of the Justices, 19 A (2d) 53 (Me., Feb., 1941).

[31] Peck v. City of New Orleans *et al.*, 5 So. (2d) 508 (La., Dec., 1941); Peck *et al.* v. Tugwell, Treasurer, *et al.*, 5 So. (2d) 524 (La., Dec., 1941).

Despite the declaration of the Rhode Island constitution that "the general assembly may also provide special regulations and manner of voting for those persons who are absent from the state in the actual military service of the United States" (Art. XXI, Sec. 1), the state supreme court held that the legislature was unable

Separation of Powers. The Kentucky supreme court declared that the state legislature may not prescribe mandatory rules of judicial procedure without encroaching upon the powers of the courts. While "in the ordinary run of cases" courts might follow rules adopted by the legislature in the interest of uniformity, nevertheless there are "emergency occasions where such provisions should not be literally followed." The legislature may cooperate with the courts in this regard, but must not dominate them.[32]

In a case testing a provision of the uniform criminal interstate rendition act, the supreme judicial court of Massachusetts adopted a less sweeping view of inherent power. As adopted by that state, the act had authorized the governor to surrender a fugitive, even though a criminal action was then pending against him for violation of a state law. The statute was sustained by the court against the contention that the surrender of a criminal under such circumstances amounted to an interference with the constitutional power of the judiciary.[33]

Notwithstanding a constitutional clause which provided that the compensation of a public officer should not be increased nor diminished during his term of office,[34] the Washington legislature in 1933 delegated power to the governor to change the salary of any state officer appointed by him or that of an employee under the control of such officer. In a suit brought by the chief state mine inspector, whose salary had been reduced under the act, the court held that "if the legislature is without power to increase or diminish the salary of a state officer during his term of office, it cannot delegate such power to the governor."[35]

Inter-Governmental Relations. On March 11, 1941, the Oklahoma constitution was amended by popular vote to adopt a rigid "pay as you go" policy and prohibit the incurring of indebtedness on the part of the state or its agencies. Opponents of the fifteen-million-dollar Grand River Dam project thereupon argued that since the court had held the dam authority —a public corporation—to be an agency of the state, the authority was prohibited from incurring further indebtedness necessary to complete the project. Supporters contended that withdrawal of authority previously

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"to confer upon the absent electors in the actual military service of the United States a greater franchise than that expressly conferred by the amendment (Art. XXI, Sec. 1.) upon all absent electors." Opinion of the Justices, 25 A (2d) 360 (R.I., March, 1942).

[32] Commonwealth *ex rel.* Attorney-General v. Furste 157 S.W. (2d) 59 (Ky., Dec., 1941). See also the prior ruling in the same case, 156 S.W. (2d) 198 (Ky., Nov., 1941).

[33] *In re* Harris, 34 N.E. (2d) 504 (Mass., May, 1941). See also County Court of Raleigh County v. Painter, Special Judge, *et al.*, 15 S.E. (2d) 396 (W.Va., June, 1941).

[34] Washington Const., Art. II, Sec. 25.

[35] State *ex rel.* Bergin v. Yelle, Auditor of State of Washington, 118 P. (2d) 807 (Wash., Nov., 1941).

granted to issue and sell bonds necessary to complete the project would impair the obligation of the contract between the Authority and the United States. This contention was upheld, the court citing cases as far back as Ohio Life Insurance Company v. De Bolt[36] to the effect that contracts could no more be impaired by a constitutional change than by an ordinary law. The amendment of March 11, 1941, was therefore held not to deprive the dam authority of power to complete the project already begun.[37]

II. RIGHTS OF INDIVIDUALS

Religion. The bearing of constitutional freedoms on the legislature's power to forbid trespass was considered by the Louisiana supreme court. In upholding the conviction of a Jehovah's Witnesses preacher who had refused to leave posted premises, the court declared that "guarantees of freedom of religious worship, and freedom of speech and of the press, do not sanction trespass in the name of freedom. . . . Personal liberty ends where the rights of others begin."[38] Similarly, the New York court of appeals sustained a village ordinance which prohibited the distribution of pamphlets upon private property without the consent of the owner, if the distribution was by non-residents. In this case, the ordinance was applied to two non-resident ministers who contended, among other things, that they had been denied religious freedom. The court held that the individual householder should decide whether or not tracts should be distributed, that the guarantee of religious liberty did not include the right to go freely onto the property of others.[39]

Could children who were unable to attend public school because of their refusal to salute the flag, and whose parents lacked means to send them to a private school, be judged delinquent and committed to an industrial school? The New Hampshire court left the matter of the children's education in doubt, but declared that "in view of the sacredness in which the state has always held freedom of religious conscience, it is impossible for us to attribute to the legislature an intent to authorize the breaking up of family life for no other reason than because some of its members have conscientious religious scruples not shared by the majority of the community."[40]

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[36] 16 How. 416, 429 (1853).

[37] Wickham v. Grand River Dam Authority, 118 P. (2d) 640 (Okla., Oct., 1941). Against claims of governmental immunity, the Pennsylvania supreme court permitted Philadelphia to collect its wage tax on the salaries of state employees resident in Philadelphia. Marson v. City of Philadelphia, 21 A (2d) 228 (Pa., June, 1941).

[38] State v. Martin *et al.*, 5 So. (2d) 377 (La., Dec., 1941).

[39] People v. Bohnke, 38 N.E. (2d) 478 (N.Y., Dec., 1941). Petition for *certiorari* denied, 62 S. Ct. 1034 (April, 1942). Where a Jehovah's Witnesses minister had peddled religious tracts in the town of Casa Grande without payment of the $25.00 quarterly license fee required of solicitors and peddlers, the Arizona court held that there likewise had been no denial of religious freedom. For only when the minister insisted upon commercializing his profession had he been obliged to comply with the law or pay the penalty. State v. Jobin, 118 P. (2d) 97 (Ariz., Oct., 1941). Affirmed by United States Supreme Court, June 8, 1942, in a five-to-four decision. See also Commonwealth v. Pascone (two cases), 33 N.E. (2d) 522 (Mass., April, 1941).

However, the Arizona supreme court sustained the constitutionality of a statute which made parents guilty of contributing to the delinquency of minors if they encouraged children not to salute the flag. The court declared that "any attempt to direct or compel a child to refuse to follow the national customs . . . does contribute to the delinquency of the child, and may properly be made a crime by the state without violating the First Amendment."[41]

Freedom of Speech and Press. A member of the Jehovah's Witnesses sect, who had been taken into custody away from a threatening crowd, called a police officer "a damned racketeer . . . a damned Fascist," and characterized the government of Rochester, New Hampshire, as "Fascist or agents of Fascists." Subsequently he was convicted of violating a statute which made it a crime to speak to a person on a public street in an offensive manner with intent of deriding, offending, or annoying him. This conviction was upheld by the New Hampshire supreme court against the contention that the statute abridged legitimate freedom of speech. The court ruled that the statute in no way interfered with the right of full and free discussion of religious, social, and governmental questions.[42]

An important decision of the Missouri court clarified the relations between the individual's right to privacy and the constitutional guarantees of freedom of speech and freedom of the press. The decision upheld damages against a news magazine for publishing an unauthorized and illustrated story concerning a rare ailment that had caused the plaintiff to be described as a "starving glutton." The court recognized a legitimate public interest in such cases, but declined to construe the freedom of the press as sanctioning publication of the plaintiff's name and photograph.[43]

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[40] State v. Lefebvre, 20 A (2d) 185 (N.H., May, 1941). A Mississippi statute which provided for distribution of free textbooks to pupils in all qualified elementary sectarian and private schools as well as public schools was sustained in Chance *et al.* v. Mississippi State Textbook Rating and Purchasing Board *et al.*, 200 So. (2d) 706 (Miss., Feb., 1941). The action of a village zoning commission in refusing a special permit to erect a church in a residential district was held arbitrary and unreasonable and a violation of the rights of the church under the state and federal constitutions. State *ex rel.* Synod of Ohio of United Lutheran Church in America v. Joseph *et al.*, 39 N.E. (2d) 515 (Ohio, Jan., 1942).

[41] State v. Davis *et ux.*, 120 P (2d) 808 (Ariz., Jan., 1942).

[42] State v. Chaplinsky, 18 A. (2d) 754 (N.H., Mar., 1941). This decision was sustained by the U.S. Supreme Court, 62 S. Ct. 766 (Mar., 1942). A statute that made it a crime to incite or advocate hatred, abuse, etc., against any group of persons by reason of their race, color, or religion was held void in a case which involved members of the German-American Bund. The statute was condemned as violating the guarantee of freedom of speech, and also because it was vague, uncertain, and indefinite. State v. Klapprott, 22 A (2d) 877 (N.J., Dec., 1941). See also City of Gaffney v. Putnam, 15 S.E. (2d) 130 (S.C., June, 1941).

Freedom of Speech: Picketing. The Texas court of civil appeals upheld an injunction which restrained the Carpenters Union from picketing a unionized restaurant whose proprietor had entered into a contract for the construction of an office-building with non-union labor. The union's contention that the injunction invalidly curtailed its right to speak and publish, and its further argument that the Meadowmoor[44] and Swing[45] cases supported this position were overruled by the state court.[46] The view was affirmed by the United States Supreme Court in a five-to-four decision. The majority held that the state might restrict picketing to the area of an industry within which a labor dispute arose.[47]

The Pennsylvania court likewise narrowed the scope of Thornhill v. Alabama.[48] It held that members of a labor union having a controversy with an employer might picket the retail outlets through which the employer's product was sold, and added that "to the extent to which they merely publicize, by true and fair statements, the facts of a labor dispute, they are within the protection given to freedom of speech." Yet this was certainly "a far cry from . . . advertising that the retailer himself is 'unfair' to labor, or urging the public not to purchase other merchandise from him, or attempting to quarantine him in the general pursuit of his business."[49]

An interesting variant of the right of peaceful picketing appeared in a unanimous decision of the California supreme court. A Los Angeles city ordinance made it unlawful for any person to use the street or sidewalk in front of his place of business or any entrance, doorway, or hallway immediately abutting upon any public way, "for the purpose of importuning or soliciting passers-by, by word of mouth or gesture, or by any sound-making device, to enter such place of business for the purpose of examining or purchasing any goods, wares, or merchandise. . . . " Plaintiffs, who operated a chain of jewelry stores and who relied heavily on the practice of "pulling in" window shoppers and passers-by, contended that the ordinance worked irreparable injury to their business, that it bore no relation to health, safety, or general welfare; hence it was an unwarranted and unreasonable interference with a lawful business and violative of both the Fourteenth Amendment and corresponding provisions of the state constitution. The court not only upheld these contentions but approved the ingenious argument that "if it is the constitutional right of an employee to stand on the street in front of his employer's place of business and solicit or importune the public not to enter and trade with his employer, is it not also his constitutional right, as well as that of his employer, when conditions of employment are satisfactory to the employee, to stand on the premises of his employer's business and importune or solicit patrons to enter and trade, thus promoting trade and commerce in aid of his employment and in aid of the general welfare?" The court declared that "the right to conduct a private business free from unreasonable regulation is just as sacred as the right of members of a labor organization to conduct a campaign for better labor conditions and should receive equal protection under the constitutional guarantees. To permit peaceful solicitation by a picket on the sidewalk and prohibit peaceful solicitation from a doorway abutting on the sidewalk would be a gross discrimination."[50]

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[43] Barber v. *Time*, Inc., 159 S.W. (2d) 291 (Mo., Feb., 1942).

[44] 312 U.S. 287 (Feb., 1941). [45] 312 U.S. 321 (Feb., 1941).

[46] Carpenters and Joiners Union of America, Local No. 213, *et al.* v. Ritter's Cafe *et al.*, 149 S.W. (2d) 694 (Texas, Apr., 1941). See also Borden Co. *et al.* v. Local No. 133 of International Brotherhood of Teamsters, etc., 152 S.W. (2d) 828 (Texas, May, 1941).

[47] 62 S. Ct. 807 (Mar., 1942). [48] 310 U.S. 88 (Apr., 1940).

[49] Alliance Auto Service, Inc., v. Cohen, 19 A. (2d) 152 (Pa., Mar., 1941).

Right of the Accused: Privilege Against Self-Incrimination. A labor leader who conducted a strike at the Maytag plant in Newton, Iowa, was convicted of the crime of criminal syndicalism. The conviction was based in part on evidence taken before a military commission while the city of Newton was under martial rule. In upholding his contention that his statements made at the hearing were not voluntary and that their use breached his right against self-incrimination, the supreme court ruled that "the record . . . shows upon its face . . . that the testimony was not voluntary," for the hearing before the commission was secret, an armed guard was maintained at all times, the accused had no counsel or legal adviser, and "it does not appear that he was advised of his rights respecting the use against him of anything he might say."[51]

In a disciplinary proceeding before the Illinois supreme court, the commissioners of the Chicago Bar Association urged that a municipal judge's position as lawyer and judge so obligated him to aid a criminal investigation that assertion of his privilege against self-incrimination rendered him liable to disbarment. While conceding that the privilege must be exercised in good faith, the Illinois supreme court failed to agree with counsel that

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[50] McKay Jewelers, Inc., *et al.* v. Bowron *et al.*, 122 P. (2d) 543 (Cal., Feb., 1942).

[51] State v. Sentner, 298 N.W. 813 (Iowa, June, 1941). The case of State v. Conway *et al.* is of unusual interest, not so much for the novelty of the views expressed with regard to waiving the privilege against self-incrimination as for the thorough analysis of the conflicting views in American jurisdictions. 154 S.W. (2d) 128 (Mo., Sept., 1941). The North Carolina court declined to construe the privilege against self-incrimination as preventing the introduction in evidence of reports of a chemical analysis of blood and urine taken from the accused without compulsion. State v. Cash, 15 S.E. (2d) 277 (N.C., June, 1941). See also this REVIEW, Aug., 1941, p. 649.

"the duty resting upon a lawyer to assist in the investigation of crime . . . outweighs . . . his moral as well as his legal right to claim the constitutional privilege." "Judges," the court declared, "are not expected to be ignorant of . . . things . . . other men . . . well know," and without passing directly on the matter, the court intimated its belief that fears of political persecution might, as had been contended, conscientiously have determined the refusal to testify.[52]

Rights of the Accused: Costs on Appeal; the Record. The Indiana supreme court held that under the state constitution[53] the court "is required to furnish a pauper defendant with a record which may be used to support an assignment of error on appeal, and furnish him with counsel to perfect an appeal, all at the expense of the county." However, after a conviction, and after the judgment has become final, the criminal prosecution is terminated and the constitutional provision is no longer operative. While a defendant is being prosecuted "the burden is upon the state to prove that he is guilty of the charge, and the constitution requires that he be afforded ample means with which to defend himself. After the judgment becomes final, the burden is upon the judgment defendant to establish facts which justify setting the judgment aside."[54]

Rights of the Accused: Jury. Hugh Pierre, a Negro convicted of murder, brought his case to the Louisiana supreme court for the second time. His conviction had been reversed by the United States Supreme Court[55] on the ground of systematic exclusion of Negroes from jury service in a parish where Negroes constituted half of the qualified population. The Louisiana court affirmed the conviction, this time on a showing that two Negroes had been on the grand jury which returned the new indictment and one Negro on the trial jury which convicted him. This the court found to be ample evidence that Negroes were no longer systematically excluded. The fact that Negroes' service on juries was not in proportion to racial division in the community was held to be of no importance.[56]

Does the restriction of jury service to poll-tax payers result in an unconstitutional discrimination against members of the Negro race, only a small proportion of whom are known to pay the tax? The issue promises to become one of major importance in the near future. It was raised in a Virginia murder case that had resulted in the defendant's conviction. The court was able to avoid passing directly on the issue, however, by indicating that the accused had failed to prove either that members of the grand

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[52] *In re* Holland, 36 N.E. (2d) 543 (Ill., Sept., 1941).

[53] Art. 1, Sec. 13.

[54] State *ex rel.* Cutsinger v. Spencer, Judge, 37 N.E. (2d) 88 (Ind., Nov., 1941).

[55] 306 U.S. 354 (1939).

[56] State v. Pierre, 3 So. (2d) 895 (La., July, 1941). *Certiorari* denied by U.S. Supreme Court, 62 S. Ct. 186.

and petit juries were selected from poll-tax payers or that the accused had not himself paid the tax.[57]

Slavery. A forty-year-old Georgia statute declared that any person who received an advance on a contract for personal services and failed either to perform according to the contract or to return the advance should be presumed to have entered into the contract with intent to defraud, and upon conviction would become a common cheat punishable as the act provided. It is perhaps less surprising that so anachronistic a statute has remained on the books than that the supreme court of Georgia sustained its validity in the face of the decision in Bailey v. Alabama.[58] It is gratifying to note that the United States Supreme Court, speaking through Justice Byrnes, held that the Thirteenth Amendment meant what it said, and reversed the verdict.[59]

Sterilization of Habitual Criminals. The supreme courts of both Oklahoma and Washington declared that a state may order the sexual sterilization of habitual criminals, although the Washington statute was invalidated for failure to provide adequate notice.[60] The Oklahoma law defined habitual criminals as persons twice convicted of felonies involving moral turpitude, whether in Oklahoma or elsewhere, and who thereafter had been convicted or imprisoned for a similar felony in Oklahoma. In the case of a defendant who had been convicted once for stealing chickens and twice for robbery, a bare majority of the Oklahoma supreme court held that the statute did not violate the *ex post facto* or cruel-and-unusual-punishment clauses of the state constitution. The majority reasoned that the statute was not penal, but was eugenic. Neither was due process violated, for the legislature was assumed to be acting on the view that habitual criminals are more likely than not to beget children of similar tendencies, and this view was regarded as reasonable. The opinion is thus at odds with established biological opinion which holds that while criminality undoubtedly runs in families, criminality as such is not inheritable.[61] Thus the assumption of reasonableness falls, and the act has no reasonable relation to its purpose.[62]

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[57] Waller v. Commonwealth, 16 S.E. (2d) 808 (Va., Oct., 1941). A grand jury may not usurp the functions of a trial jury. Thus a Georgia grand jury that summoned an accused person before it and questioned him concerning the charge against him while considering a bill of indictment was held to be acting "against the public policy of this state" and in violation of the constitution. Jenkins v. State, 14 S.E. (2d) 594 (Ga., April, 1941). Trial by jury means trial by a jury in the presence of a judge who supplies the jury with ample guidance. He must not limit his comment to an abstract discussion of the law. Smith v. Kappas *et al.*, 15 S.E. (2d) 375 (N. C., June, 1941). [58] 219 U.S. 219 (1911).

[59] Taylor v. State, 13 S.E. (2d) 647 (Ga., Mar., 1941), reversed in Taylor v. Ga. 62 S. Ct. 415, Jan. 12, 1942. The attitude of the Kansas supreme court expressed in Graham v. Board of Education of Topeka stands in sharp contrast to that of the Georgia court in the Taylor case. A twelve-year-old Topeka Negro boy was promoted from the sixth grade of the Buchanan elementary school and applied to Boswell Junior High School for enrollment in the seventh grade. He was denied the right to enroll because of his race and color, and thereupon instituted mandamus proceedings, alleging that refusal to grant him the educational advantages of the Boswell school was discriminatory and violated his rights under the Fourteenth Amendment. The Kansas supreme court upheld this contention. It declared that segregation of races is permissible provided equal facilities are maintained, but that maintenance of a six-six plan for white children and an eight-four plan for Negroes, with many facilities and advantages afforded students at the Boswell school that were lacking at the Buchanan school, necessarily constituted discrimination. 114 P. (2d) 313 (Kan., June, 1941).

[60] *In re* Hendrickson, 123 P. (2d) 322 (Wash., Mar., 1942).

III. GOVERNMENT AND BUSINESS

Unemployment Insurance and Housing. A marked decline is apparent in the number and intensity of attacks on social legislation. Most widely challenged during the year were the unemployment compensation acts. Without exception, courts sustained such statutes against almost every conceivable argument, though with occasional dissent.[63]

Except in the South, where tax exemptions were involved, even public housing seemed to lose its controversial character.[64] Findings of both the state legislature and of Congress that rural housing was for a public purpose were deemed sufficient in South Carolina.[65] Florida's court reaffirmed its earlier holding that properties of municipal housing authorities were used exclusively for a public purpose, and hence were tax exempt.[66]

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[61] *Harvard Law Rev.*, Vol. 55, pp. 285–6 (Dec., 1941).

[62] Skinner v. State *ex rel.* Williamson, Attorney-General, 115 P. (2d) 123 (Okla., July, 1941). Reversed by United States Supreme Court, 6 S. Ct. 1110 (June 1, 1941). See Elmo R. Smith, "Validity of Statute Providing for Sterilization of Habitual Criminals," *Cal. Law Rev.*, Vol. 30, pp. 189–193 (Jan., 1942).

[63] Unemployment Compensation Commission v. J. M. Willis Barber and Beauty Shop *et al.*, 15 S.E. (2d) 4 (N.C., May, 1941); Picklesimer v. Pratt *et al.*, 17 S.E. (2d) 524 (S.C., Nov., 1941); Commonwealth v. Perkins, 21 A (2d) 45 (Pa., Sept., 1941); New Haven Metal & Heating Supply Co. v. Danaher, Administrator, etc., 21 A (2d) 383 (Conn., July, 1941); Friedman v. American Surety Co. of New York (Supreme Court) 151 S.W. (2d) 570 (Texas, May, 1941). A divided court in the Friedman case distinguished the Texas decision in McCombs *et al.* v. Dallas County *et al.* (Court of Civil Appeals), 136 S.W. (2d) 975 (Texas, Feb., 1940), examined in this REVIEW, Aug., 1940, p. 718.

[64] See this REVIEW, Aug., 1940, pp. 715–716, and Aug., 1941, pp. 697–698, for previous summaries.

[65] Benjamin v. Housing Authority of Darlington County *et al.*, 15 S.E. (2d) 737 (S.C., July, 1941).

[66] State *ex rel.* Grubstein v. Cambell, Tax Assessor, *et al.*, 1 So. (2d) 483 (Fla., Apr., 1941); Smith, County Tax Assessor, v. Housing Authority of Daytona Beach, 3 So. (2d) 880 (Fla., Sept., 1941).

Regulation of Trades and Professions. State courts continue to favor integrated control of trades and professions. A Washington statute which denied any person the right to conduct a dental office in his name unless personally present in the office a majority of the time, but which did not interfere with dental chains already established, was upheld by the state supreme court.[67] An amendment to the Illinois dental practice law which closed a loophole in the law against professional advertising was likewise approved.[68] Refusal of New York authorities to grant one of the world's leading neurologists a license to practice medicine under a special provision in the law which authorized licensing of an applicant who had "reached a position of conceded eminence and authority in his profession" was upheld by a divided court of appeals. The majority felt obliged to let licensing authorities make their own interpretation of the quoted phrase.[69]

On the other hand, efforts of occupational groups to "professionalize" their callings have met firmer opposition, especially where these efforts have been directed at eliminating marginal competitors. A ruling of the Board of Examiners in Embalming which required funeral directors to carry a certain number of caskets in stock was sharply condemned by the Nebraska court. In the judgment of the court, the requirement bore no substantial relation to its avowed objects, and was arbitrary and discriminatory.[70] A majority of the Arizona high court felt similarly about a statute which licensed and regulated the practice of commercial photography. The act in question did not "pretend to regulate the practice of photography in the interests of the . . . public, but rather in the interests of the professional photographers who are fortunate enough to obtain a license."[71]

Zoning. Courts have been cautious in sanctioning the exercise of the police power upon purely aesthetic grounds. Although such considerations have figured in support of zoning, set-back, city planning, and anti-billboard legislation, the public peace, health, and safety generally have supported the holdings. Thus two recent Florida decisions are of more than ordinary interest. In the earlier case, the supreme court expressly assigned aesthetic considerations as the chief factor in support of a zoning ordinance of the city of Miami Beach. The city's character as a vacation center, and the desirability of enforcing limits on the use of property to add to its attractiveness, were held to bring the ordinance within the scope of the police power.[72] Later, the court sustained statutes which prohibited the erection and maintenance of advertising signs within a distance of fifteen feet from the outside boundary of public highways. In this instance, however,[73] the majority rested its decisions on "the safety and comfort" of the traveling public. Two dissenting justices, convinced that such legislation could properly be sustained upon aesthetic grounds alone, argued that a leading case holding to the contrary[74] should have been expressly overruled.

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[67] Campbell v. State, 122 P. (2d) 458 (Wash., Feb., 1942).

[68] Lasdon *et al.* v. Hallihan, Director of Registration and Education, *et al.*, 36 N.E. (2d) 227 (Ill., Sept., 1941).

[69] Marburg v. Cole *et al.*, 36 N.E. (2d) 113 (N.Y., July, 1941).

[70] Golden v. Bartholomew *et al.*, 299 N.W. 356 (Neb., July, 1941).

[71] Buehman *et al.* v. Bechtel, 114 P. (2d) 227 (Ariz., June, 1941). An ordinance of Scranton, Pennsylvania, which had set barber shop hours at 8:30 to 6:30, with an hour longer on Saturdays and before holidays, was invalidated by the supreme court. Saccone *et al.* v. City of Scranton *et al.*, 20 A (2d) 236 (Pa., May, 1941).

Carriers: Fence Law. Railroads burdened by anachronistic fence laws found relief in a far-reaching decision of the Florida court. A statute which granted double damages and attorney's fees without proof of negligence for livestock killed on an unfenced right of way was invalidated. Counsel for the carrier stressed the great changes that had occurred since enactment of such legislation a half-century ago. Formerly, practically all livestock roamed at large, today barely thirty per cent does so. Notwithstanding the admittedly greater hazards from such accidents, motor carriers are subject to neither the fencing requirements nor the double damages provision. Furthermore, they escape the burden of constructing and maintaining rights of way. On the basis of this showing, and after citing the well settled rule that a statute may be valid when enacted but may become invalid as a result of changed conditions,[75] the court struck down the state's fence law of 1889.[76]

Public Ownership. Ownership of an easement adequately protected the city of Manchester's water supply, but protection could be less expensively secured by outright ownership of the land. In a decision which involved no novel principles of law, but which probably will be cited wherever public ownership programs can be shown to pay their way, the New Hampshire court squarely held taking of property for purposes of economy to be an authorized public purpose. "Public economy, including any proper measures lessening the burden of taxation, is a matter of the general welfare. . . . Riddance of private ownership may be as great a public need as one requiring expenditure."[77]

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[72] City of Miami Beach v. Ocean & Inland Co., 3 So. (2d) 364 (Fla., July, 1941).

[73] Hav-a-Tampa Cigar Co. v. Johnson, Chairman of State Road Dept., 5 So. (2d) 433 (Fla., Jan., 1942); John H. Swisher & Son, Inc. *et al.* v. Johnson, Chairman of State Road Dept., 5 So. (2d) 441 (Fla., Jan., 1942).

[74] Anderson v. Schockleford, 76 So. 343, 345.

[75] Nashville, C., and St. L. Ry. v. Walters, 294 U.S. 405, and cases there cited.

[76] Atlantic Coast Line Railroad Co. v. Ivey, 5 So. (2d) 244 (Fla., Jan., 1942).

[77] Leary v. City of Manchester, 21 A. (2d) 156 (N. H., June, 1941). A California court invalidated a statute which made public utility companies liable for attorney's fees and other expenses growing out of unsuccessful attempts to enjoin municipalities from acquiring their own public works. The court saw no reasonable basis for

Taxation: General. In 1938, an Illinois county lowered the assessed value of real estate by twenty per cent. It then applied an equalization rate of forty per cent to both real and personal property and levied a tax. The state supreme court saw no merit in a telephone company's claim that this procedure violated a constitutional clause which required payment of taxes in proportion to value.[78] Its holding prompted critics of less liberal decisions to hope that the way might finally be cleared to permit a graduated income tax and a thorough overhauling of the state's archaic system of property taxation.[79]

An ambitious program of southern rice interests came to naught when the supreme court of Arkansas invalidated the Rice Development Commission Act of 1941. This measure, which was linked to similar laws in Louisiana and Texas, authorized the appointment of a commission of growers and millers, and provided for a two-cents-per-hundred-weight tax on rice milled within the state. Resulting revenues were to be used for promotional and advertising purposes. The majority was unimpressed with decisions upholding similar statutes in Florida, Idaho, and Michigan.[80] It regarded the levy as a property tax rather than an excise, and one which was laid on a common right for a private purpose. Exercise of the taxing power in behalf of fewer than one per cent of the state's farmers could not be justified by reference to the common welfare. Two dissenting judges expressed regret that the decision invalidated the entire tri-state program. They argued that the tax was really one on the privilege of putting milled rice in the channels of commerce.[81]

License Tax. An ordinance of the city of Richmond enumerated 155 businesses and fixed a license tax for each. A "catch-all" section then re-

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classifying suits by public utilities opposed to public ownership in the same category with suits by insurance companies and railroads contesting insurance claims, fence, and tax legislation. Sacramento Municipal Utility Dist. v. Pacific Gas and Electric Co. (District Court of Appeal) 115 P. (2d) 582 (Cal., July, 1941).

[78] People v. Southwestern Bell Telephone Co., 36 N.E. (2d) 362 (Ill., Sept., 1941).

[79] See note, *Ill. Law Rev.*, Vol. 36, pp. 796–98 (Mar., 1942). Illinois farm organizations tried to show that farm lands had been assessed at thirty-five per cent of fair cash value while city property had been assessed at twenty-five per cent. Though it was forcibly argued that this violated the state uniformity clause, as well as federal due process and equal protection, the supreme court declined to intervene: plaintiffs had failed to show either fraudulent valuation or that their own lands had been discriminated against. Tuttle *et al.* v. Bell, County Collector, 37 N.E. (2d) 180 (Ill., Nov., 1941). *Certiorari* denied by United States Supreme Court, Mar. 2, 1942, 62 S.C. 801.

[80] Floyd Fruit Co. v. Florida Citrus Commission, 175 So. 248, 112 A.L.R. (1937); State *ex rel.* Graham v. Enking 82 P. (2d) 649 (1938); and Miller v. State Apple Commission, 296 N.W. 245 (1941). See this Review, Aug., 1941, p. 699.

[81] Stuttgart Rice Mill Co. v. Crandall, 157 S.W. (2d) 205 (Ark., Jan., 1942).

quired a flat fee of fifty dollars from "any person, firm, association, partnership, or corporation engaged in any business, occupation, or profession . . . for which no specific license tax is levied." The Virginia court declared that "if this unceremonious lumping of the newsboy and the steel magnate, the music teacher and the dental laboratory, could be called a classification at all," then "it is certainly whimsical, irrational, capricious, and grossly unjust." Not only were state and federal due process and equal protection clauses violated, but determination of the tax was held to be improperly delegated to the commissioner of revenue.[82]

Forty-two years after enactment, and after issuance of 44,000 permits and collection of $225,000 in fees, the Maryland court of appeals held void a Baltimore ordinance which required a five-dollar to one-hundred-dollar nightly license fee for the conduct of public dances. The mere fact that uncontrolled discretion had been given to the secretary of the board of police commissioners to determine the amount of the fee was deemed decisive. Evidence which tended to show that the minimum fee had been universally charged of social dances and ball rooms, including that of the plaintiff, whereas the maximum had been required only of walkathons, dime dance halls, and other places which required policing and regulation, failed to impress the judges.[83]

The Ohio supreme court held void an ingeniously drafted Dayton ordinance the obvious purpose of which was to reduce or eliminate mail order competition in the supply of fixtures to be installed by local plumbers. Provisions that required vendors to report weekly on sales and that forbade the installation of plumbing fixtures not carrying a Dayton license sticker were held to have too remote a relation to public health to be sustained under the police power.[84]

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[82] Williams v. City of Richmond, 14 S.E. (2d) 287, 134 A.L.R. 833 (Va., April, 1941).

[83] Maryland Theatrical Corporation v. Brennan (Court of Appeals) 24 A (2d) 911 (Md., Mar., 1942). A city ordinance which imposed a five-dollar-a-year license tax on cigarette-vending machines, but which provided that the fee should apply only to operators of four machines or more, was invalidated by the Kansas supreme court as an arbitrary classification. Two judges dissented. Matheny v. City of Hutchinson, 121 P. (2d) 227 (Kan., Jan., 1942). A licensing statute which required restaurants and kitchens to be separated from other businesses in the same place, and which applied only to restaurants subsequently established, was held violative of state and federal due process and equal protection clauses. State *ex rel.* F. W. Woolworth Co. v. State Board of Health *et al.*, 298 N.W. 183 (Wis., May, 1941).

[84] Direct Plumbing Supply Co. *et al.* v. City of Dayton *et al.*, 38 N.E. (2d) 70 (Ohio, Oct., 1941). State courts continue to look with less favor on so-called "Green River" ordinances which make uninvited house-to-house canvassing a nuisance *per se.* On finding that recent decisions in Maryland, Virginia, and New Jersey were all adverse, the Iowa court held that such legislation imposed unreasonable and unwarranted restraint upon lawful business. City of Osceola v. Blair, 2 N.W. (2d) 83

Chain Store Taxation. The Texas court of civil appeals adhered to earlier holdings and sustained the state's chain-store tax law, first, as the law had been applied to subsidiary corporations,[85] and second, as it involved an oil company whose counsel contended that a tax of $800,000 on a net profit of one million and an investment of six million in filling stations was confiscatory within the meaning of the state due process clause.[86]

Use Tax. The Michigan supreme court sustained the state's use tax,[87] but refused to permit the act to be applied in a manner which would have made an Illinois tailoring corporation the collector of the tax on men's suits sold and delivered in Illinois for carriage to owners in Michigan.[88] Three judges contended that the mere fact that the company's orders were accepted and title passed in Illinois, and that the goods were shipped into Michigan in interstate commerce, did not exempt the company from the use tax after the property came to rest in Michigan. According to their view, the tax was not upon the operations of interstate commerce, but upon the privilege of use after commerce was at an end. The purpose and necessity of the tax as an adjunct to the sales tax should have been determinative.[89]

Tax Exemption. To encourage the establishment of new industries in the state, Florida in 1930 amended its constitution to exempt from taxation for a period of fifteen years "all plants established on or after July 1, 1929, engaged . . . in the manufacture of steel vessels, . . . tires, fabrics and textiles, wood pulp, paper, . . . automobiles, . . . aircraft . . . " with the exception that no exemption should run beyond 1948. Four years later, a similar exemption was granted to all motion picture studios established

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(Ia., Feb., 1942). To the same effect, see City of Mt. Sterling *et al.* v. Donaldson Baking Co., 155 S.W. (2d) 237 (Ky., Oct., 1941), and *Ex parte* Faulkner, 158 S.W. (2d) 525 (Texas, Feb., 1942). An ordinance which imposed a hundred-dollar license fee on merchants having no fixed place of business in the town was sustained by the California supreme court despite the fact that a local merchant would have had to pay but twenty dollars. Hansen v. Town of Antioch *et al.* 114 P. (2d) 329 (Cal., July, 1941). Compare Southern Linen Supply Co. *et al.* v. City of Hazard *et al.*, in which the Kentucky supreme court disapproved collection of an annual license fee of four hundred dollars from out-of-town laundries and dry cleaners, a charge eight times that required of local business men. 151 S.W. (2d) 758 (Ky., May, 1941).

[85] Safeway Stores, Inc., of Texas v. Sheppard, 158 S.W. (2d) 319 (Tex., Jan., 1942), writ of error denied, Mar. 11, 1942.

[86] Humble Oil & Refining Co. v. State, 158 S.W. (2d) 336 (Tex., Feb., 1942).

[87] Banner Laundering Co. v. Gundry *et al.*, 298 N.W. 73 (Mich., May, 1941).

[88] The majority of the court here distinguished the recent holding of the United States Supreme Court in Nelson v. Sears, Roebuck & Co., 61 S. Ct. 583 (1941), on the ground that the mail order house in that case had been liable for the sales tax because of its intrastate retail store business, whereas the Illinois tailoring firm previously had been held not to be liable for the Michigan sales tax.

[89] J. B. Simpson, Inc., v. Gundry *et al.*, 298 N.W. 81 (Mich., May, 1941).

in the state on or after July 1, 1933. Corporations appealing for judicial enforcement of these provisions have as a rule been heard sympathetically.[90]

A recent case involved a motion picture studio which moved from New York to Florida in 1938. The court held that earlier decisions with reference to the state's $5,000 homestead exemption were controlling: "organic exemptions from taxation qualify existing taxing power when no dominant federal law is violated." Since in the present case there was no claim that the exemption violated the federal contract clause, and since it was clear from the pleadings that new taxable property more than offset the exemptions and thereby permitted the taxing district to meet its obligations, the exemption was held to be enforceable. However, the court was careful to restrict its decision by saying that "every case must be determined on its own essential facts . . . and it must be shown that the dominant law is not violated by the claimed exemption."[91]

[90] City of Tampa v. Tampa Shipbuilding & Engineering Co., 186 So. 411 (Fla., Jan., 1939); Burnett v. American Welding & Tank Co., 197 So. 458 (Fla., July, 1940); and National Container Corp. v. State, 189 So. 4 (Fla., May, 1939), 122 A.L.R. 1000.

[91] Fleischer Studios, Inc., v. Paxson *et al.*, 2 So. (2d) 293 (Fla., May, 1941).

Willow Run Produces Bombers and Intergovernmental Problems. Wings over Europe and the Far East are being spread from what was until last year mere Midwestern field and stream—Willow Run, now the site of the world's largest and most revolutionary bomber plant. Air supremacy for the United Nations may rest upon Henry Ford's adaptation of assembly-line methods from autos to airplanes. B-24 bombers now being flown from the hangars at the bomber plant are casting their shadows over the countryside round about. But months ago, the first shadows of Willow Run lengthened over the neighboring cities and villages. Rural residents are finding themselves in the midst of a metropolitan maëlstrom. Orchards, vineyards, wood-lots, and truck gardens are giving way to highways, trailer camps, and federal housing facilities. Population growth and changing land-use are staring the local urban and rural governments in the face. Immediate need for roads, public health service, zoning, and housing are problems which cut across the paths of national, state, and local authorities.

When Henry Ford and the Defense Plant Corporation agreed in April, 1941, upon Willow Run, a rural crossroads in Ypsilanti township of Washtenaw county, Michigan, as the site for their thousand-acre war industry, the sugar bush and cornfield gave way to the low-lying brick structure built to employ up to 60,000 workers. The administrative problems registered on the political seismographs of every governmental unit within a twenty-five mile radius. Ypsilanti township, with a property valuation of something over $3,000,000 in 1941, had to assess for the local tax-rolls buildings and equipment costing some $57,000,000.

Officials responsible for the immediate area in which the bomber plant is located consist of a supervisor (who also serves as assessor), a clerk, a commissioner of highways, a treasurer, justices of the peace, and constables—all part-time officials elected by the voters. No single political division, however,—township, county, or even the state—found itself in a position to assume full responsibility for this industrial colossus.

The President of the United States took cognizance of the difficulties in a press conference by stating that the area affected included a half-dozen cities, portions of several counties, and state and federal jurisdictions. He did not include a score of townships and numerous school districts. Coöperation among these units was made more difficult because of the lack in Michigan counties and townships of integrated executives who could plan, make the contacts, and carry out agreements with dispatch. In addition, the city of Ypsilanti, about four miles west of the plant, and Ann Arbor, about ten miles northwest, had been moving along in accustomed procedures for many years with weak-mayor and council governments.

Until December 7, 1941, the federal and state governments considered the primary need to be the building of highways giving ready and multilane access to the plant for former automotive workers living in Detroit, Dearborn, Wayne, and other communities of the metropolitan region. One out of every five factory workers in Detroit, according to the planning division of the state highway department, has been accustomed to live more than ten miles from his place of employment. Until recently, he had not been as concerned about the distance from home to factory as with the time necessary to make the trip in his own automobile. Bomber-plant planners went on the theory, before 1942, that the worker switched from auto-making to plane production would not seek a change in residence if he could reach work in less than an hour. By construction of sufficient highway facilities in the right places, it was hoped to avoid creation of housing and community services such as health, safety, recreation, and utilities in the semi-rural surroundings of the new plant.

Being already familiar, federal, state, and county coöperation in the matter of roads facilitated immediate construction of the proposed highways. In Michigan, some years ago, the county superseded the township as the local unit responsible for roads in unincorporated areas, leaving the township highway commissioner without a job. No sooner was the bomber plant under construction than the state highway department officials met with the Wayne and Washtenaw county road commissioners to prepare and submit a plan for approval of the federal Public Roads Administration and the War Department. Approximately $4,000,000 has since been spent for roads in the immediate vicinity, 75 per cent being financed by the federal government and 25 per cent by the state and the two counties most affected. After consultation, federal authorities agreed to pay for all purely defense highways establishing access to the bomber plant.

Actual construction and supervision of the highways was not always allocated in strict accordance with geographic jurisdiction of the governmental authority. The Wayne county road commission built roads in Washtenaw county, for example, where speed and efficiency would be increased if one agency supervised the extension of a particular access road. The state did not confine its activities entirely to state highways, but also executed a series of roads directly into the plant parking lots designed to accommodate 30,000 cars. As a result of intergovernmental planning and operations, roads immediately encircling the plant were completed before production was under way.

In November, 1940, by local referendum as prescribed by state law, the Huron-Clinton Parkway Authority was authorized to develop recreational facilities for the 3,000,000 residents in five counties in southeastern Michigan. This *ad hoc* five-county metropolitan authority was fortuitously in process of organization when Willow Run loomed on the horizon.

Full development of the projected metropolitan parkway must await the end of the war, but an immediate program has been planned for those thousands who are jamming the Huron-Clinton area to work in war industries. This will include a park to be located near the Willow Run plant. The Huron-Clinton Parkway Authority has played a hand in intergovernmental developments. It joined with the state highway department to hire the services of Robert Moses, New York commissioner of parks, as a special consultant for a proposed Detroit-Willow Run, limited-access express-way. Starting in Detroit, this through way will run approximately twenty miles through the heart of the Ford River Rouge Plant in Dearborn to Willow Run without a single traffic light or crossroad. This project, estimated to cost $11,800,000, has been certified by the War Department for immediate construction. The federal government will provide 75 per cent of the $9,500,000 cost of the construction; the Michigan highway department will provide the balance and an additional $2,300,000 for right of way.

Contrary to anticipations of governmental and plant officials, people began to drift into the region directly adjacent to the bomber plant. Protection of public health became one of the main concerns of the local governments involved, since they were not at the time all geared for the task. Washtenaw county as the only local unit adequately prepared demonstrated by its newly established county health department the advantages of federal, state, and local coöperation in the field of health administration.

In Wayne county, the helplessness of the various township health officers meant that health problems were to go by default if the state health department was unable to assume the burden. Late in 1941, a state law went into effect for the regulation and control of trailer camps, and enforcement was vested in the state health department working through county health units where they existed. Minimum standards for water supply, sewage disposal, laundry facilities, garbage disposal, and food handling in camps where food is sold from public kitchens, were carried out most effectively in Washtenaw county. By February, 1942, two camps had been forced to close and temporary permits had been issued to ten others pending improvements to meet the requirements of the law.

Early in the summer of 1941, the Washtenaw county health department foresaw the growth of shack towns and their attendant health menace. It framed a sanitation ordinance in coöperation with the state health department and public health experts at the University of Michigan, the county prosecutor, and the state attorney-general's office making certain that the provisions of the measure were within the scope of the county's authority. After the Washtenaw county board of supervisors, acting under the state enabling act of 1927, belatedly adopted the ordinance in March, 1942, the county was in a position to regulate sanitation in cabin camps and restaurants, and to control the requirement for and location of septic tanks, and of water supply for private dwellings.

Although the staff of the Washtenaw health department is small, its personnel has been increased through the coöperation of other agencies of government. Both the W.P.A. and N.Y.A. offered clerical and non-technical help. A special sanitarian was secured for the county by the state commissioner of health from the U.S. Public Health Service, his traveling expenses to be paid by the county and his salary by the federal government. A similar coöperative arrangement pays for an additional public health nurse assigned to special health problems in the Willow Run area. Rapid turnover in personnel in restaurants caused by the attraction of higher wages in war industries in the vicinity has rendered especially difficult the department's effort to give physical examinations and courses in sanitation to food handlers.

In the enforcement of the sanitation ordinance, the health unit has had general coöperation. When the township clerks issue building permits, they send copies to the county health department, where proposed sanitary facilites can be checked. The Federal Housing Administration refuses to approve loans unless the building plans meet existing sanitary regulations.

Hospital facilities in near-by communities are inadequate to the increased incidence of hospitalization. The federal government is furnishing funds to the city of Ypsilanti to the extent of four-fifths of the cost of a new eighty-bed hospital, while the city has voted $100,000 as its share.

Planning for the area is not a task to be undertaken piecemeal by the individual units of government. An intergovernmental planning commission was created by the city of Ypsilanti, the officials of the city school district, and the township of Ypsilanti. The State Defense Council also undertook a "master survey" of the bomber plant region, including governmental problems, social services, and population trends. As yet, no over-all scheme has been announced. Zoning, one of the most significant aspects of planning, has been undertaken by the various units without correlation. Two townships in Washtenaw county, Ypsilanti, and Ann Arbor availed themselves of the opportunity under state law to enact zoning ordinances in an attempt to control developments until a comprehensive zoning ordinance could be enacted by Washtenaw county.

Although the people of Washtenaw county voted in August, 1941, to give the board of supervisors power to zone under Public Act 79 of 1929, and although the need for zoning has become more evident with the months, no ordinance has been forthcoming from the county planning committee. This delay has stemmed from several factors. First, the supervisors were hesitant to establish detailed land-use zones which they felt would limit unduly the use of land. Second, a mistaken idea was held that the purpose of zoning was to enact a building code. Third, the planning committee did not understand the necessity for technical assistance which would have enabled it to achieve a comprehensive zoning ordinance in a limited time. The campaign which preceded the adoption of the zoning enabling act emphasized that it would prevent tar-paper shacks and rural slums, and the supervisors assumed that the voters did not intend to limit the use of property throughout the county by a series of detailed use zones. Under the guise of the zoning ordinance, they undertook to formulate a building code which the attorney-general indicated to be *ultra vires.* It was at this juncture that the board of supervisors secured the governor's action in requesting the state legislature in special session to amend the county zoning act so that counties such as Washtenaw which had adopted the act could enact building codes as well as use zones within unincorporated areas.

At the same session, early in 1942, a bill particularly vital to Willow Run was proposed to regulate and control "wild cat" subdividing by vesting in the state planning commission full authority to review plans for proposed subdivisions. Under this bill, all plats would have been submitted to the state planning commission. This agency would have passed on the suitability of the land for subdivision purposes and determined whether the subdivision made adequate provision for water supply, drainage, sanitation, recreation and schools, soil and subsoil conditions, and traffic safety. The measure was defeated by rural interests and real estate groups over the protests of the State Planning Commission.

It is mandatory under the zoning enabling act that the State Planning Commission assist the counties in formulating their zoning proposals. Unfortunately, the Michigan commission had been for some years without legislative appropriation, and being in the process of reorganization when Washtenaw needed assistance, it was unable to furnish all-out aid.

On January 31, 1942, the *Detroit News* stated: "To date, there has been absolutely no coördinated planning by federal, state, metropolitan defense area, county, township, municipal, and bomber plant officials. So far as intercommunication is concerned, each might be dwelling on separate planets." The local officials were inclined to feel that the federal government should assume more leadership in a problem which it had created. In midwinter, the secretary of the Ypsilanti board of commerce described the rôle of the federal government as follows: "I have managed to record the names of only 15 representatives of federal agencies of all those calling here since last summer. They pop in and pop out and are never seen again. They tell us how big our problem is going to be and ask us what we are going to do about it. We say: 'You tell us what you want us to do. If you don't know, who does?' But they go away and each one asks the same questions of the same persons around here and that's the last we hear of it."

After the Japanese attack on Pearl Harbor and the successful Japanese invasion of the Dutch East Indies, planning for the future of the Willow Run area shifted from roads to housing. Conservation of dwindling and irreplaceable stocks of natural rubber became paramount. It was obvious that all of the employees at the Ford bomber plant could not be scattered throughout the existing communities in the Detroit metropolitan area and commute to the plant. As the need for large housing projects near the plant developed, it became apparent that the federal government alone was in a position to meet the emergency. The state and local governments had succeeded in coöperating with the federal government in such functions as road-building and public health administration. Events were to demonstrate that relations were not to be so smooth and harmonious in the housing program. Intergovernmental procedures in this field were not predetermined by any established pattern, because the laws of Michigan are not conducive to the establishment of a housing authority in semi-rural areas. Sentiment for the creation of local housing authorities has been lacking.

Even before Pearl Harbor, there had been public discussion of a "bomber city" to be built somewhere between Ypsilanti and Detroit. In November of 1941, Sidney Hillman, as associate director of the then existing Office of Production Management, stated before the national convention of the C.I.O. in Detroit that President Roosevelt had approved a 10,000-unit defense city. This statement was accepted as an endorsement of a model community which the United AutomobileWorkers had advanced to the O.P.M. as a partial solution to the anticipated Willow Run housing problem. The President had told Hillman that he was instructing the responsible federal housing agencies to survey the possibilities of a defense city and submit their findings to him for consideration at the earliest possible moment. Several months later, in February, 1942, it was announced that the President had requested Frederic A. Delano, chairman of the National Resources Planning Board, to coördinate plans to get a housing project under way for the Willow Run area.

Soon Delano held a meeting in Detroit to discuss with local officials and other interested parties the plans for housing. Walter P. Reuther advanced again the desires of the U.A.W. for a model community such as had been proposed in November, 1941. Shortly after this Detroit meeting, on February 24, 1942, President Roosevelt by executive order created the National Housing Agency, naming John B. Blandford, Jr., as administrator, terminating the existing lack of coördination among federal housing agencies. The Administrator was authorized to perform housing functions previously vested in the Federal Loan Administrator, Federal Works Administrator, and the Coördinator of Defense Housing. The new National Housing Agency was composed of three principal constituent units —the Federal Home Loan Bank Administration, the Federal Housing

Administration, and the Federal Public Housing Authority. The F.P.H.A. was an amalgamation of agencies and personnel engaged in constructing housing with public money. Difficulties in the Willow Run area were partially due to the conflicting governmental jurisdictions and levels involved; but dilatory action of the national government relative to housing stemmed, it is presumed, from conflict entirely within the federal government. With the establishment of the National Housing Agency and its component units, the administrative decks in Washington were cleared for action in the Willow Run and other critical regions.

Early in March, 1942, Mr. Blandford announced a housing program for the Detroit region which would include 30,000 units from private funds guaranteed by the F.H.A. and 15,000 units from federal funds under the Lanham Act. Specific sites for the large-scale governmental housing projects were not indicated at the time, but the general scope of the federal contribution was clear to state and local authorities, which meanwhile had become increasingly aware of the dangers inherent in trailer-camp and shack-colony developments mushrooming around the bomber plant.

In mid-April, the federal Public Housing Authority revealed that sites for approximately 7,000 governmental housing units had been selected near Wayne and Inkster, two small communities located respectively nine and thirteen miles from the bomber plant. It was indicated that these would be permanent housing developments. The selection of this site aroused no local opposition. It was not until May that any real argument developed between local and federal authorities over sites for "bomber cities" to meet the needs of the Willow Run plant. Early in that month, it became known that an additional bomber city federally built and federally sponsored would be located northeast of Ypsilanti in Superior township, Washtenaw county. Opposition welled up from the city councils of Ann Arbor and Ypsilanti and the board of supervisors in Washtenaw county. With no low-cost governmental housing projects in existence in the area, the local authorities were thinking in terms of meeting the housing shortage by extensive private developments supported by F.H.A. guaranteed mortgages. Local officials emphasized the importance of building in or near established communities in order to utilize existing community facilities.

Underlying the opposition was the fear that a bomber city in Superior township, Washtenaw county, would be a C.I.O. city, therefore Democratic, and a menace to Republican control of the county. This bomber city, it was held, would be a ghost-town after the war. The Huron River, recently reclaimed by federal-local coöperation in building sewage disposal plants, might again be polluted. Near-by property values would be depressed. Homes so close to the plant would be the first to be bombed.

Local representatives were dispatched to Washington upon two occasions to protest. In May, the county prosecutor presented the county board's objections to Administrator Blandford. In June, when it appeared that the project would be advanced in spite of local objections, the prosecutor was instructed to return to the capital with a resolution requesting the Truman Committee of the Senate to investigate the need for a bomber city in Superior township. Officials of the Ford Motor Company indicated opposition to the building of a new city in this township, citing many arguments prevalent among local authorities. While discord prevailed over ideological and factual differences, the problem of priorities as to critical materials needed for the project appeared more crucial day by day.

Proposed plans for the housing of bomber plant and other workers include, beside the large scale F.H.A. program of 30,000 private housing units, and the Federal Public Housing Authority's program of 15,000 dwellings divided between the Wayne-Inkster and Superior township areas, a temporary dormitory program for 10,000 workers plus temporary apartments for an additional 8,000. These *ad interim* dormitories and apartments are to be built east of Ypsilanti within walking distance of the plant and not far from the Superior township location suggested for a "planned" bomber city. Colonel F. Charles Starr, of the Detroit office of the Federal Public Housing Authority, was quoted by the *Detroit News* of June 7, 1942, pointing out that the bomber plant was planned in 1941, but nothing was really done about housing until 1942: "We start with the fact that the plant is there, and the employees must have shelter. Willynilly, we must provide housing. The people had to choose between a planned community and a shacktown." In arriving at a decision, the people find themselves pulled in contrary directions by governmental agencies on two levels. The F.P.H.A. reflects the point of view of the national administration and progressive community elements, while the Washtenaw board of supervisors represents conservative rural and urban groups. This is inevitable when the national administration proposes projects which involve social concepts not yet widely accepted by local traditions within an area.

The over-all conclusions from this episode in intergovernmental relations are complex. No one level of government can manage the whole situation. If the federal government attempted to do so, it would be dictatorship. If the state of Michigan tried, it would arouse protest. If any local unit claimed exclusive rights, chaos would result. In functions such as road-building and public health administration, where federal-state-local relations were well established in this region, the problems were anticipated and coöperative action to meet them was carried out without friction.

In over-all planning, the number of local units made a difficult field. If the county government had an executive to call in expert help, or if the state and federal governments had given the local officials much-needed assistance, this basic function might have been better handled. In the problem of housing, confusion, conflict, and lost motion were precipitated by the first approaches to the problem, but have now been resolved in favor of the far-reaching federal program. Local authorities had neither the financial resources nor the skill necessary to encompass the needs for low-cost housing on such a scale as the Willow Run plant portends. They waited for the federal government to take the lead, and when precipitate action was taken, resented it. No better evidence could be offered of the sound public policy embodied in the Lanham Act than the general apathy of local governmental authorities to the immediacy of the housing problem evolving before their very eyes.

American intergovernmental relations have been strengthened since World War I. The new federal-state-local procedures developed in the past decade can now pay dividends in the Willow Run region. The machinery of coöperative undertakings was set up partly to meet the emergencies of the depression of the 'thirties. The war in which the United States is now engaged will act as a catalytic agent to produce further changes. The Willow Run problem is neither federal, state, nor local. It is a projection of the thesis that public administration is a unitary process which cuts across the old layers of governmental organization.

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Treatment of the Conscientious Objector Under the Selective Service Act of 1940. Among the many problems which the war has thrust upon the United States has been that of the proper treatment of the conscientious objector to compulsory military service. Our record in this regard during the first World War was not one of which a democratic nation could be proud. With the enactment of the Selective Service and Training Act of 1940, reconsideration of the issue was necessary. Now, after almost two years of experience with the administration of the Act, a systematized plan quite unlike that of the past has been formulated and placed in operation.[1]

When the Burke-Wadsworth bill was first introduced in Congress, no provision was made for the conscientious objector. Within a short time, however, representatives of the Society of Friends (Quakers), Mennonites, and other religious denominations and organizations consulted with

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[1] The present note is based in large part upon the publications of the National Service Board for Religious Objectors (Washington), the National Council for Conscientious Objectors (New York), and the American Friends Service Committee (Philadelphia).

Administration and congressional leaders and secured a guarantee of special treatment for the conscientious objector, which was incorporated in the legislation as finally passed.[2]

The pertinent provision of the Selective Service Act is Section 5(g), which states that no person shall be subject to combatant training and service in the land or naval forces of the United States "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form." Any such person whose claim is sustained by the local board shall be assigned to "noncombatant service as defined by the President," or if he is opposed to noncombatant service, to "work of national importance under civilian direction." This section of the act also provides for an appeal from the local board if the claim for exemption is not allowed.[3] As interpreted by the Selective Service organization, the right of conscientious objection is granted to anyone who by reason of personal conviction is opposed to the bearing of arms, and is not limited to members of recognized religious sects, as was the case under the Draft Act of 1917.

Working closely with representatives of the National Service Board for Religious Objectors, a central body organized by the leading pacifist groups, officials of the Selective Service administration have now established the procedure for handling objectors under Section 5(g). All male persons between the prescribed age limits are required to register under the act on designated days. The first formal opportunity to state objection is given in the questionnaire sent to registrants by the local draft board. In this questionnaire the objector may indicate his objection to either combat or noncombatant military service, or to both. At the same time, he is required to ask the local board for a special form on which he must state in detail his convictions, this form to be used by the board in judging his sincerity. The board may call witnesses, including the objector, but is not required to do so prior to classification.

All registrants, including objectors, are classified by the local board. Conscientious objectors are classified along with the others and only those placed in Class I are asked to establish the sincerity of their convictions. In other words, the local board examines the convictions of the objector only if he is not deferred on other grounds, such as physical disability, dependents, or occupational status.

In disposing of those cases where examination of the convictions of the objector is necessary, the local board may do one of three things: (1) It may find that the convictions against military combat service are sincerely held and direct the objector, when his number is called, to perform only such duties as are classified as non-combatant by the President. (2) It may find the convictions against both combatant and non-combatant service to be sincere and direct that the objector be assigned to "work of national importance under civilian direction." (3) It may reject the claim of the objector and order that he be held liable for full military service.

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[2] Committees on Military Affairs, House of Representatives and United States Senate, 76th Cong., 3rd Sess., *Hearings on Compulsory Military Training and Service*, July, Aug., 1940, *passim*.

[3] *U.S. Code*, 1940, Title 50, §305.

If the local board takes the last step, the objector is entitled to a hearing, at which he may "direct attention to any information in his file which he believes . . . has not been given sufficient weight," and "may present such further information as he believes will assist the local board in determining his proper classification." He may also present witnesses in his behalf.[4] If the local board still decides against him, he may appeal to a board of appeal. His appeal is transmitted by the board to a U.S. district attorney. After investigation by the Federal Bureau of Investigation and review of the case by a special hearing officer, before whom the objector may again appear with witnesses, the record is submitted to the Department of Justice and referred back by the Department, with recommendations, to the board of appeal for its decision. As a last resort, the objector may petition his state director or the national director of Selective Service for the right of an appeal to the President. This is, in effect, an appeal to the National Director; for the final disposition is made by him.

Non-combatant service for those willing to participate in the military forces to that extent was defined in a presidential proclamation issued on December 11, 1940. The following were included in such service: service in any unit which is unarmed at all times, service in the Medical Department wherever performed, and service which does not require the use of arms in combat, provided the individual's assignment within such unit or installation does not require him to bear arms or be trained in their use. The proclamation also said that "non-combatant training consists of training in all military subjects except marksmanship, combat firing, target practices, and those subjects relating to the employment of weapons."[5]

Arrangements for those refusing to engage in non-combatant service but willing to perform "work of national importance under civilian direction" were announced on December 21, 1941, by the Director of Selective Service after conferences with representatives of the National Service Board for Religious Objectors and with various government officials, including the President;[6] and the plan was fully authorized by the President in an executive order of February 6, 1941.[7] Under the program outlined in these statements and since put into operation, work camps for objectors have been established under the direct supervision of several of the pacifist groups, with the coöperation of others. Most of the units are located in unused C.C.C. camps, furnished by the Federal Security Agency, supplemented by several camps belonging to the Brethren and American Friends

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[4] *Selective Service Revised Regulations*, cited in National Council for Conscientious Objectors, *Inform. Sheet No. 6.*

[5] Executive Order No. 8606.

[6] *New York Times*, Dec. 22, 1940.

[7] Executive Order No. 8675.

Service Committee. The "work of national importance" calls for physical labor comparable to that performed by men in the armed forces and includes soil conservation, irrigation, forestry and wild-life protection, rural rehabilitation, and public health service. Although the government furnishes basic camp equipment, such as cots, blankets, cooking and eating utensils, and bears the cost of maintenance and repair, the responsibility of camp administration is placed with the several religious groups. It averages about $35.00 a month per man.[8]

Here, then, is the plan. For those who refuse to bear arms, but who are willing to perform non-combatant duty, there is work in medical units or other branches of the regular services. For those who refuse to participate even in such non-combatant activities, opportunity is provided for physical labor of social usefulness under the supervision of the Quakers and other religious groups. It appears that the man who is sincere in his objections to military training and service will be given a fair hearing. But if the objector refuses to register for the draft or to serve under any conditions, he may be prosecuted for violation of law. A considerable number of men were jailed for failure to register at the first call in October, 1940. It should be noted, however, that in several cases of men over forty-five refusing to register in April, 1942, involuntary registration was accepted when the forms were filled out by an official. In two other instances involving refusal to register and refusal to obey the order for induction into the army, the court, instead of sentencing the objectors to federal prison, paroled them to one of the regular C. O. camps.[9]

Mention should be made of the special status of clergymen and divinity students. According to Section 5(e) of the act, they are automatically exempted from military service, although required to register. This has placed some men in this privileged group in a difficult position, for it has denied them the opportunity of expressing their conscientious objection to military service. As a result, some failed to register, notably eight students at Union Theological Seminary in New York City. These men and others have been jailed for this offense.[10] In a few states, local boards are permitting clergymen and divinity students to waive immunity and be classified as any other person.[11]

In conclusion, it may be said that the arrangements made for conscientious objectors are for the most part liberal. Many of the mistakes of the 1917 draft law have been avoided, and the objector is now assured fair treatment. The alternatives to military service are much less severe than before. Probably the most significant feature of the present scheme is the fact that responsibility for the discharge of the public duty of those conscientiously opposed to non-combatant service has been placed in the hands of his own kind, the pacifist religious groups. Certainly this is convincing evidence of sympathetic treatment.

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[8] For descriptions of the work camps, see *Saturday Evening Post*, Vol. 214, No. 7, p. 26 (Aug. 16, 1941), and *New York Times Magazine*, May 10, 1942, p. 14.

[9] Fellowship of Reconciliation press release, May 14, 1942.

[10] *Christian Century*, Nov. 27, 1940, p. 1467.

[11] *Nation*, Jan. 11, 1941, p. 55.

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Denaturalization on the Ground of Disloyalty. The experience of recent years has shown that espionage, sabotage, and subversive propaganda have everywhere been preliminary to, and an integral part of, the program of Axis military aggression. That such activity constituted a threat of increasing gravity to the United States was recognized, even prior to our entry into the present war, by the enactment of legislation designed to strengthen our defenses against propagandist and subversive activities of foreign agents[1] and organizations under foreign control,[2] to tighten up the surveillance of aliens,[3] and to make more rigid the requisites for naturalization.[4] Since the United States became an active belligerent, additional measures have been adopted for the control of alien enemies and nationals of Axis origin.

In the present note, we are not concerned with the broader aspects of the problem of repressing subversive activity, in which both alien and disloyal national elements of the population have participated. We deal only with a special defense available against naturalized citizens in the form of a statute which provides for the setting aside and cancellation of certificates of citizenship on the ground of illegal or fraudulent procurement. Revocation of naturalization, as applied to citizens guilty of disloyal utterances or conduct, is based upon the theory that acts subsequent to naturalization may be indicative of a mental reservation at the time the required oath of allegiance was taken. In other words, it is deemed that disloyal conduct on the part of a naturalized citizen, even though it does not fall within the scope of the criminal statutes, may be of such a character as to demonstrate that the naturalized citizen had never in good faith renounced his allegiance to the country of origin, or that he was not attached to the principles of the Constitution at the time of his admission to citizenship.

During the first World War, the remedy of denaturalization was resorted to in a number of cases, and the "successful outcome of these early litigations and the accompanying wide publicity had," in the opinion of the Attorney-General, "a marked effect upon naturalized citizens of disloyal tendency throughout the country."[5] In the present war, it has already been invoked on an unprecedented scale. Through April 30, 1942, the names and records of 226 naturalized citizens in 33 states had been referred by the Attorney-General to United States district attorneys for denaturalization proceedings, and by June a number of these cases were already in the courts.[6]

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[1] Act of June 8, 1938, 52 Stat. 631; 22 U.S.C.A. §§ 601, 611–616.

[2] Act of Oct. 17, 1940, 54 Stat. 1201; 18 U.S.C.A. §§ 14–17.

[3] Act of June 28, 1940, 54 Stat. 670; 8 U.S.C.A. §§ 451–460.

[4] Act of Oct. 14, 1940, 54 Stat. 1137, 305; 8 U.S.C.A. § 705.

A statutory basis for the revocation of naturalization on the ground of illegal or fraudulent procurement was first provided in Section 15, Act of June 29, 1906,[7] which made it the duty of United States district attorneys, upon affidavit showing good cause therefor,[8] to institute judicial proceedings in any court having jurisdiction to naturalize aliens, for the purpose of setting aside and canceling a certificate of citizenship on the ground of fraudulent or illegal procurement.[8] Prior to the enactment of this provision, a court of equity appears to have been competent, on general principles and without express legislative authorization, to set aside á certificate of citizenship obtained by illegal or fraudulent means.[9] It is unnecessary, however, to consider this question, since the constitutionality of

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[5] *Annual Report of the Attorney-General of the United States* (1918), p. 39.

[6] *Information Digest, Office of Government Reports*, No. 458 (May 6, 1942), p. 8. Numerous cases have since been referred to the courts, but information as to the exact number is not available. During the first six months after the entry of the United States into the war, denaturalization decrees were handed down in 65 cases. *Office of Government Reports Division, Office of War Information*, No. 502 (July 7, 1942), p. 9. [7] 34 Stat. 601.

[8] In general, the term "illegally procured" refers to cases in which the applicant or the court has failed to follow the requirements of the statute, or where, after disclosure of all facts, the court has erred in its finding of the facts or in its application of the law. See United States v. Ginsberg, 243 U.S. 472 (1917). Thus, for example, a certificate may be canceled for illegal procurement if the applicant has not resided continuously in the United States for a period of five years next preceding his petition, if he was not within the required qualifications as to race, or if the certificate of arrival was not filed with the petition. For a brief discussion of revocation on the ground of illegal procurement, see Luella Gettys, *The Law of Citizenship in the United States* (1934), p. 98 ff. In the fraud cases, with which we are here alone concerned, the applicant has obtained naturalization through intentional falsehood or deception, or through intentional or unintentional failure to disclose certain material facts. See *Univ. of Pa. Law Rev.*, Vol. 88 (1940), p. 842 ff.

[9] United States v. Norsch, 42 Fed. 417 (C.C.E.D. Mo. 1890); Johannessen v. United States, 225 U.S. 227, 240 (1912); *In re* Malocluso's Naturalization, 237 Pa. 132, 137 (1912); United States v. Albertini, 206 Fed. 133, 135 (D. Mont. 1913). In United States v. Spohrer, 175 Fed. 440, 447 (C.C.D.N.J. 1910), Judge Cross stated: "The legislation of 1906 simply permits to be done by different courts and somewhat different procedure what could, under like conditions, in my judgment, have been done by a bill in equity, for the reason that the jurisdiction of the court was fraudulently invoked by the petitioner in an *ex parte* proceeding. The fraud was practiced in the very act of obtaining the judgment, and it, and it alone, induced the judgment, and where that is the case the judgment is open to attack by a direct proceeding in equity."

Section 15 has been uniformly upheld;[10] and, further, since no cases involving revocation on the ground of disloyalty were presented to the courts before 1906.

The provisions of Section 15 have been carried over without material change in the Nationality Act of 1940,[11] now in force. Section 338 of this statute provides: (a) "It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor,[12] to institute proceedings in any court specified in subsection (a) of Section 301[13] in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured." (b) "The party to whom was granted the naturalization alleged to have been fraudulently or illegally procured shall, in any such proceedings under subsection (a) of this section, have sixty days' personal notice in which to make answer to the petition of the United States; and if such naturalized person be absent from the United States or from the judicial district in which such person last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the state or the place where such suit is brought."[14]

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[10] See cases cited, note 21, *infra.*

[11] Act of Oct. 14, 1940, 54 Stat. 1137; 8 U.S.C.A. §§ 501–907.

[12] "This affidavit is not jurisdictional, but merely makes it the duty of the district attorney to proceed. The district attorney could institute proceedings of this character *sua sponte* whenever he had reason to believe that the law had been violated in the respect alleged in the petition." Schwinn v. United States, 112 F. (2d) 74, 75 (C.C.A. 9th, 1940).

A record of naturalization can be impeached only by the United States, United States v. Norsch, 42 Fed. 417 (C.C.E.D. Mo. 1890); and not by a state, Petersen v. State, 40 Tex. Civ. App. 175 (1905); or by a private person, Commonwealth v. Paper, 1 Brewst. 263 (Pa., 1868). It is not subject to collateral attack, Johannessen v. United States, 225 U.S. 227 (1912).

[13] That is, in any district court of the United States, and in courts of record in any state or territory having jurisdiction in law or equity in which the amount in controversy is unlimited. Jurisdiction to revoke a certificate of naturalization is vested in any court having jurisdiction to naturalize aliens, whether the certificate was granted by that court or by any other court, state or federal. "The suggestion that it is not competent for a federal court to vacate a judgment of a state court and a state court that of a federal court is not persuasive, because the authority of state courts to naturalize aliens, as well as that of the federal courts, emanates from Congress. All are, for the purposes of the naturalization acts, federal courts, and one set of courts is not foreign to the other. So that relief in the particular matter may as readily be adjudged by a federal court against the judgment of a state court, and vice versa, as by a federal court against the judgment of a federal court or a state court against that of a state court." United States v. Aakervik, 180 Fed. 137, 141 (D. Ore. 1910); United States v. Ovens, 13 F. (2d) 376 (C.C.A. 4th, 1926).

The statutory provisions for the revocation of naturalization constitutes only a second line of defense against the fraudulent procurement of citizenship, for under Section 11 of the act of June 29, 1906,[15] the United States was given the right to appear in naturalization proceedings and to be heard in opposition to the granting of any certificate. Whether or not the United States has availed itself of this opportunity, the decree admitting the applicant to citizenship does not estop the government from subsequently instituting a suit for cancelation. A decree granting citizenship is not *res judicata,* even though the government entered an appearance in the final hearing and unsuccessfully raised the same objection as that which later formed the basis of the cancelation proceedings. The provisions which authorize the appearance of the United States and the filing of an independent bill in equity for cancelation afford cumulative, and not alternative, remedies.[16,17] The rationale of the numerous decisions which have established this point is that "an alien who seeks political rights as a member of this nation can rightfully obtain them *only* upon terms and conditions specified by Congress. . . . No alien has the slightest right to naturalization unless all statutory requirements have been complied with."[18] "An alien has no moral or constitutional right to retain the privileges of citizenship if, by false evidence or the like, an imposition has been practiced upon the court, without which the certificate of citizenship could not and would not have been issued. As was well said by Chief Justice Parker in Foster v. Essex Bank, 16 Mass., 245, 273, 'there is no such thing as a vested right to do wrong'."[19]

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[14] In holding that service of subpoena by publication is not a denial of due process, Judge Bourquin, in United States v. Knight, 291 Fed. 129, 131, said: "The relations between state and citizen, the latter's obligations to the former, are unchanged by his absence. The state is where he left it. He is bound to hear and to respond to its call to render the service of allegiance and to account for default therein at any time in any place. It is not obliged to pursue him with personal notice, but may adopt publication or other convenient method. For the state's purposes, the *res* and *situs* of the relation between it and the absent citizen remain in the territory of the state. There is analogy in marriage and divorce. Hence, jurisdiction and due process."

[15] Sec. 334 (d), Nationality Act of 1940; 8 U.S.C.A. § 734 (d).

[16] In Johannessen v. United States, 225 U.S. 227, 238 (1912), the Supreme Court denied that a certificate had any conclusive effect when procured *ex parte* in the ordinary way, but left open the question whether the doctrine of *res judicata* was applicable where the government had appeared and litigated. This question was answered in the negative in United States v. Ness, 245 U.S. 319, 327 (1917), in which it was held that "§ 11 and § 15 were designed to afford cumulative protection against fraudulent naturalization." *Accord,* United States v. Milder, 284 Fed. 573 (C.C.A. 8th, 1922); United States v. Khan, 1 F. (2d) 1006 (W.D. Pa. 1924); United States v. Turlej, 18 F. (2d) 435 (D. Wyo. 1927), *aff'd,* Turlej v. United States, 31 F. (2d) 696 (C.C.A. 8th, 1929); United States v. Unger, 26 F. (2d) 114 (S.D. N.Y. 1928); United States v. Parisi, 24 F. Supp. 414 (D.Md. 1938); Maney v. United States, 278 U.S. 16 (1928). The principle is summarized by Judge Tuttle in United States v. Ali, 7 F. (2d) 728, 730 (E.D. Mich. 1925): "It is now settled law that the statutory naturalization proceeding by which an alien seeks the privilege of citizenship is not a judicial adversary proceeding in any true legal sense, and that an order directing the issuance of a certificate of citizenship in such naturalization proceeding is, in essence, not a judgment rendered by a court in a pending suit between adverse parties, and as such final and binding upon said parties as to all matters involved in the suit and decided by the judgment, but is merely a grant, in special proceedings authorized by Congress, of a political privilege conferred by the government upon the petitioning alien purely as a gratuity, and subject to whatever terms and conditions Congress may impose therein, including the right

The constitutionality of the statutory provisions for revocation of naturalization has been challenged on three principal grounds: (1) that the act of June 29, 1906, is invalid as an exercise of judicial power by the legislative department; (2) that cancelation, being retrospective in opera-

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of government to insist upon a cancelation of such certificate, if found to have been illegally procured." See Henry B. Hazard, "The Doctrine of *Res Judicata* in Naturalization Cases in the United States," *Am. Jour. of Internat. Law*, Vol. 23 (1929) pp. 50–55.

An acquittal in a criminal prosecution for fraudulent procurement of naturalization has been held not *res judicata* of the issue whether a certificate of naturalization has been fraudulently procured. It does not constitute estoppel by judgment in subsequent proceedings for cancelation, since the latter proceeding is not the same cause of action as the criminal prosecution. Sourino v. United States, 86 F. (2d) 309 (C.C.A. 5th, 1936); *cert. denied*, 300 U.S. 661 (1936). In this case, the sole issue in the criminal prosecution was the bar of the statute of limitations. The doctrine of laches is inapplicable in cancelation proceedings. In United States v. Ali, 7 F. (2d) 728, 730 (E.D. Mich. 1925), it was stated: "It is not, and cannot be, claimed that there is any applicable statute of limitations; and it is elementary that the doctrine of laches does not apply as against the government, when suing in its capacity as a sovereign and asserting governmental rights." *Accord*, Maibaum v. United States 232 U.S. 714 (1914); United States v. Marino, 27 F. Supp. 155 (S.D.N.Y. 1939); United States v. Brass, 37 F. Supp. 698 (E.D.N.Y. 1941).

[17] Although the contrary had been stated in United States v. Ness, 245 U.S. 319, 326 (1917), it is now settled law that the United States can appeal from a decree granting a petition for naturalization. Tutun v. United States, 270 U.S. 568 (1926); United States v. Ovens, 13 F. (2d) 376 (C.C.A. 4th, 1926); United States v. Bischof, 48 F. (2d) 538 (C.C.A. 2d, 1931); Estrin v. United States, 80 F. (2d) 105 (C.C.A. 2d, 1935); United States v. Villaneuva, 17 F. Supp. 485 (D.Nev. 1936). See Henry B. Hazard, "The Right of Appeal in Naturalization Cases in the Federal Courts," *Amer. Jour. of Internat. Law*, Vol. 21 (1927), pp. 40–52.

[18] United States v. Ginsberg, 243 U.S. 472, 475 (1917)

[19] Johannessen v. United States, 225 U.S. 227, 241 (1912).

A certificate of naturalization has frequently been compared to a patent for land or for an invention, revocable by judicial proceedings on the ground of fraudulent procurement. See Luria v. United States, 231 U.S. 9, 28 (1913); United States v. Albertini, 206 Fed. 133, 135 (D. Mont. 1913); and United States v. Spohrer, 175 Fed. 440, 446 (C.C.D.N.J. 1916), in which it was said: "That the government, especially when thereunto authorized by Congress, has the right to recall whatever of property tion,[20] is within the prohibition of Art. I, Sec. 9, Cl. 3, of the United States Constitution relating to *ex post facto* legislation; and (3) that it deprives the "defendant" of the right of trial by jury, as guaranteed by the Seventh Amendment. After the passage of the act of 1906, the action for cancelation of fraudulent certificates was generally sustained by the United States district courts, and in 1912 the Supreme Court gave a direct ruling on the first two objections in the case of Johannessen v. United States.[21] Speaking for a unanimous court, Mr. Justice Pitney said: "The act does not purport to deprive a litigant of the fruits of a successful controversy in the courts; for . . . the proceedings for naturalization are not in any proper sense adversary proceedings, but are *ex parte* and conducted by the applicant for his own benefit. The act in effect provides for a new form of judicial review of a question that is in form, but not in substance, concluded by the previous record, and under conditions affording to the party whose rights are brought into question full opportunity to be heard. Retrospective acts of this character have often been held not to be an assumption by the legislative department of judicial powers. . . . The act imposes no punishment upon an alien who has previously procured a certificate of citizenship by fraud or other illegal conduct. It simply deprives him of his ill-gotten privileges. We do not question that an act of legislation having the effect to deprive a citizen of his right to vote because of something in his past conduct which was not an offense at the time it was committed would be void as an *ex post facto* law. . . . But the act under consideration inflicts no such punishment, nor any punishment, upon a lawful citizen. It merely provides that, on good cause shown, the question whether one who claims the privileges of citizenship under the certificate of a court has procured that certificate through fraud or other illegal contrivance, shall be examined and determined in orderly judicial proceedings. The act makes nothing fraudulent or unlawful that was honest and lawful when it was done. It imposes no new penalty upon the wrongdoer. But if, after fair hearing, it is judicially determined that by wrongful conduct he has obtained a title to citizenship, the act provides

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has been taken from it by fraud, is . . . well settled, and, if that be true of property, then by analogy and with greater reason it would seem to be true where it has conferred a privilege in answer to the prayer of an *ex parte* petitioner. A recall of this character injures no one but the fraud doer, and his discomfiture is entitled to but slight consideration."

[20] The provisions of Section 15 of the Act of 1906 were expressly made applicable to certificates issued prior to 1906. The Nationality Act of 1940, Section 338(g) (8 U.S.C.A. § 738(g)) stipulates: "The provisions of this section shall apply not only to any naturalization granted and to certificates of naturalization issued under the provisions of this Act, but to any naturalization heretofore granted by any court, and to all certificates of naturalization and citizenship which may have been issued heretofore by any court or by the Commissioner based upon naturalization granted by any court."

[21] 225 U.S. 227 (1912); Luria v. United States, 231 U.S. 9 (1913).

that he shall be deprived of a privilege that was never rightfully his. Such a statute is not to be deemed an *ex post facto* law."[22]

The above statement that proceedings for the cancelation of naturalization are not adversary in character is decisive of the question whether there should be trial by jury. In the first case to come before the court, under Section 15, Judge Hough said: "The proceeding . . . if not *sui generis*, somewhat resembles a bill to revoke or set aside a grant or patent, or to cancel and vacate a judgment, and such causes are not of right triable by jury."[23] This ruling was affirmed by the Supreme Court in Luria v. United States, in which it was held that a cancelation proceeding was "not a suit at common law. The right asserted and the remedy sought were essentially equitable, not legal, and this, according to the prescribed tests, made it a suit in equity. . . . "[24]

In a group of cancelation cases decided during, or shortly after, the first World War, it was held that expressions of sympathy toward their former country by naturalized citizens of German origin were evidence of lack of complete renunciation of all foreign allegiance at the time citizenship was granted. The constitutionality of this principle of "relation back," as applied to another provision of Section 15, act of June 29, 1906, had already been sustained by the Supreme Court,[25] but it appears to have been first invoked in a case involving an adopted citizen's disloyal attitude *subsequent* to naturalization in the case of United States v. Wursterbarth, decided in May, 1918.[26] The respondent, a native of Germany, had been naturalized in 1882. After the United States entered the war, he made repeated statements that he would do nothing to defeat

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[22] 225 U.S. 227, 241, 242 (1912).

[23] United States v. Mansour, 170 Fed. 671, 676 (S.D.N.Y. 1908).

[24] 231 U.S. 9, 28 (1913).

[25] Luria v. United States, 231 U.S. 9 (1913). Section 15, par. 2 [8 U.S.C.A. § 738 (f)] provided that if a naturalized citizen takes up permanent residence abroad within five years after his naturalization, it shall be *prima facie* evidence of a lack of intention to become a permanent citizen at the time of filing his petition for citizenship. In the absence of countervailing evidence to overcome the adverse presumption, cancelation for fraud was authorized. In holding that Section 15 "prescribes a rule of evidence, not of substantive right," Justice Van Devanter said: "Legislation providing that proof of one fact shall constitute *prima facie* evidence of the main fact in issue, is but to enact a rule of evidence, and quite within the general power of government. . . . That a legislative presumption of one fact from evidence of another may not constitute a denial of due process of law or a denial of the equal protection of the law, it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. . . . " *Ibid.*, at 25. See Glaser v. United States, 289 Fed. 255 (C.C.A. 7th, 1923); United States v. Turlej, 18 F. (2d) 435 (D. Wyo. 1927), *aff'd*, Turlej v. United States, 31 F. (2d) 696 (C.C.A. 8th, 1929); Rothman v. United States, 18 F. (2d) 577 (C.C.A. 6th, 1927).

[26] 249 Fed. 908 (D.N.J. 1918).

Germany, that he did not wish to see the United States win the war, and that he had come to this country only "on a vacation or visit." In answer to the respondent's contention that evidence of disloyalty displayed subsequent to naturalization was not sufficient to show lack of good faith or fraudulent intention at the time the oath of allegiance was taken, Judge Haight said: "As the years succeeding his naturalization passed, coupled with the fact that he continued to dwell within our midst, associate with our citizens, receive the benefits which this nation and its institutions have conferred upon him, acquire property here, and hold public office . . . , it is natural to presume that his affection and feeling of loyalty and allegiance to this country would increase, and that any ties which bound him to the country from which he came would correspondingly decrease. If, therefore, under such circumstances, after 35 years, he now recognizes an allegiance to the sovereignty of his origin, superior to his allegiance to this country, it seems to me that it is not only permissible to infer from that fact, but that the conclusion is irresistible, that at the time he took the oath of renunciation, he did so with a mental reservation as to the country of his birth, and retained toward that country an allegiance which the laws of this country required him to renounce before he could become one of its citizens. Indeed, for the reasons just stated, his allegiance to the former must at that time have been stronger than it is at present."[27]

Cancelation of naturalization, under like circumstances and on like grounds, followed in several cases,[28] of which United States v. Herberger[29] is the most significant. In letters written during the fall of 1917, the respondent expressed strong criticism of the war effort of the United States and deep contempt for the American people. It was admitted by the court that such expressions were not sufficient to warrant a conviction for treason; but, Judge Cushman said: " . . . It is not necessary that a man be shown to be guilty of treason in order to conclude from his actions and speech that he is not loyal and has not been loyal; that he is not attached to the country and its principles and devoted to its welfare. . . . Loyalty or allegiance is, necessarily, of slow growth; therefore, somewhat involuntarily, not fully subject to the will. Those who lightly, for temporary advantages, undertake to change their allegiance are liable to overlook the deep-seated nature of this feeling; but the fact that not until afterwards, in times of stress, is it made manifest that the desires, suffered to lie dormant, are stronger for their native than their adopted country, although this fact may not be fully realized at the time of their naturalization, renders it none the less a legal fraud for the applicant to fail to disclose his true, although latent, feeling in such a matter."[30]

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[27] *Ibid.*, at 910.

[28] United States v. Darmer, 249 Fed. 989 (W.D. Wash. 1918); United States v. Kramer; 262 Fed. 395 (C.C.A. 5th, 1919); Schurmann v. United States, 264 Fed. 917 (C.C.A. 9th, 1920). In the latter case, the respondent, after war was declared against Germany, had stated: "I have sworn allegiance to your flag or country; but I am going to tell you this much: That I didn't swear away my birthright." Judge Hunt commented on this statement as follows: "One who spoke in that way, and whose frequent expressions were so plainly against the United States and in favor of Germany, must have taken the oath of full faith and allegiance with a reserved determination, to be kept down, but nurtured, until a momentous time might come. In years, however, the time did come, and the criterion of original fraud must be the later conduct, which, in its relation to the earlier attitude, will furnish safe ground for judgment." *Ibid.*, at 920.

[29] 272 Fed. 278 (W.D. Wash. 1921).

In one World War case, the government sustained a reversal.[31] The United States brought a suit to cancel the certificate of one Woerndle, who had been naturalized in 1904. The evidence showed that prior to the entry of the United States into the war, the respondent had sympathized deeply with Germany, had expressed hostility to her enemies, and had criticized the policy of the President, which, he said, was calculated to involve the United States in the conflict. From the date when the United States became a belligerent, there was no evidence of any disloyal acts or utterances on the part of the respondent. The complaint was dismissed on the ground that the government had failed to prove its contention that the respondent's expressions were such as to justify the conclusion that he had in 1904 intended to subordinate his allegiance to the United States to that which he had owed his country of origin.

The above cases, in which disloyal conduct *subsequent* to naturalization is deemed to be the criterion of original fraud, must be distinguished from those in which the applicant actually retained a foreign allegiance or believed in the forcible overthrow of government *at the time of his naturalization*, and failed to disclose it to the court. In the earliest case of this type,[32] cancelation was decreed when the government proved that the respondent had obtained naturalization through fraudulent concealment of the fact that he was at that time opposed to the form of government of the United States and that he believed in its overthrow by violence. Naturalization has been revoked on the ground that the applicant was a member of the I.W.W.,[33] an anarchist,[34] or a communist[35] when the certificate was issued, and that he was not, therefore, "attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States."[36]

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[30] *Ibid.*, at 290, 291.

[31] United States v. Woerndle, 288 Fed. 47 (C.C.A. 9th, 1923). See United States v. Rovin, 12 F. (2d) 942 (E.D. Mich. 1926), in which it was held that mere advocacy of a resumption of trade relations with the Soviet Government was not indicative of a disloyal attitude, justifying cancelation on the ground of fraud. There was no evidence that the respondent, at the time of his naturalization or at any subsequent time, advocated any change in the governmental system of the United States by other than lawful means. In Rowan v. United States, 18 F. (2d) 246 (C.C.A. 9th, 1927), the court considered it to be "far too conjectural" to suppose that the respondent, who had joined the I.W.W. in 1912 and remained a member through 1917, must at the time of his naturalization in 1907 have been opposed to organized government, or lacking in allegiance to the United States. Nor was the fact that Rowan was convicted in 1917 of a violation of the Espionage Act logically probative of his state of mind in 1907.

[32] United States v. Olsson, 196 Fed. 562 (W.D. Wash. 1912).

Since the presumption that the state of mind of a person at the time of his naturalization was the same as when he subsequently committed an act of disloyalty is often extremely weak as a basis on which to predicate fraud, proceedings for the revocation of citizenship should be resorted to only in clear cases. Otherwise, a decree of cancelation will be open to the charge that the real basis is not fraud committed on the court, but an offense committed by the citizen subsequent to his naturalization.[37] As Judge Bourquin said in the case of United States v. Sharrock: "To deprive a man of his priceless possession of and inestimable right to American citizenship, there must be full proof. Nothing will warrant cancelation of his grant of citizenship, but clear, unequivocal, and convincing evidence that in quantity and quality inspires conviction of the truth of the charge, virtually beyond reasonable doubt."[38]

Because of the peculiar instability of decrees and orders of naturalization which arises out of the possibility of cancelation for fraud, it has been recommended that Congress enact a substantive penalty section providing for the denationalization or denaturalization of all persons convicted of "offenses against the existence of government,"[39] as it has already done in the case of desertion from the armed forces in time of war, and treason.[40]

In this note, we have discussed only the legal background for a consideration of the cancelation cases now pending in the federal courts. These cases, together with some criticism of the present law, will, it is hoped, be made the subject of a later discussion.

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[33] United States v. Swelgin, 254 Fed. 884 (D. Ore. 1918).

[34] United States v. Stuppiello, 260 Fed. 483 (W.D.N.Y. 1919).

[35] United States v. Tapolcsanyi, 40 F. (2d) 255 (C.C.A. 3d, 1930); United States v. Schneiderman, 33 F. Supp. 510 (N.D. Cal. 1940), *aff'd*, Schneiderman v. United States, 119 F. (2d) 500 (C.C.A. 9th, 1941), *cert. granted*, 62 S. Ct. 98 (1941). See *Bill of Rights Review*, Vol. 2 (1941), pp. 64–65.

[36] Act of June 29, 1906, Sec. 4; 8 U.S.C.A. § 707 (a). See Henry B. Hazard, " 'Attachment to the Principles of the Constitution' as Judicially Construed in Certain Naturalization Cases in the United States," *Amer. Jour. of Internat. Law*, Vol. 23 (1929), pp. 783–808, esp. 802–806.

[37] See dissenting opinion by Judge Booth in Turlej v. United States, 31 F. (2d) 696, 699, 700 (C.C.A. 8th, 1929).

[38] 276 Fed. 30, 32 (D. Mont. 1921). Also, United States v. Tedesco, 31 F. Supp. 322 (S.D.N.Y. 1940); United States v. Zgrebec, 38 F. Supp. 127 (E.D. Mich. 1941); United States v. Der Manelian, 39 F. Supp. 959 (D.R.I. 1941).

[39] See Forrest R. Black, "Disloyalty and Denaturalization," *Ky. Law Jour.*, Vol. 29 (1941), pp. 143–171, esp. 168–171. "Offenses Against the Existence of Government" are defined in Title 18, U.S.C.A., Ch. 1.

[40] Nationality Act of 1940, Sec. 401 (g), (h); 8 U.S.C.A. § 801 (g), (h).

INTERNATIONAL AFFAIRS

The Return of the Baltic Germans. There is little point to speculating at this time upon the historical significance of the resettlement of populations recently carried out in Europe. Yet the mechanics of a transfer of such magnitude are of interest, and a fairly adequate account can now be presented of the return of the Baltic Germans.

On October 15, 1939, Estonia, and on October 30, 1939, Latvia, signed treaties regulating this translocation of persons of German nationality. No agreement was made with Lithuania where, after the loss of Memel, there remained only about 30,000 Germans, mostly peasants.[1] An official account summarizes the German-Estonian agreement as follows:

"According to the protocol, all persons who were entered in the lists of the German Cultural Autonomy Administration[2] or who had a certificate from the Ministry of the Interior that they were of German nationality were allowed to go, with their husbands or wives, parents, and children.

"The emigrants were allowed to take with them, free of duty, their furniture; or it could be sent out within three months of their departure. They could also take their tools, and to a limited extent materials which they needed to carry on their trade. They were allowed to take cash in Estonian currency up to Kr. 50 per person, and jewelry up to the value of

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[1] Lithuania apparently played a somewhat different part in German plans from that of Estonia and Latvia. The German Foreign Minister, Ribbentrop, stated on June 22, 1941, that in the first Russian-German pact of August 23, 1939, Lithuania remained in the German sphere of interest. In the second pact—the frontier and friendship agreement of September 28, 1939—the German government "with heavy heart" relinguished its interests in a greater part of Lithuania to Russia. A strip of Lithuania, however, "still remained within the German sphere of interest." Ribbentrop further maintained that the Soviet government declared at that time "that it did not intend to occupy, Bolshevize, or annex any states situated within their sphere of interest other than territories of the former Polish state" (*New York Times*, June 23, 1941). This latter statement is in accord with the Russian promises made to the Baltic States in the autumn of 1939. In a secret clause to the Russian-Latvian pact of October 5, 1939, Russia even promised that the number of troops stationed in Latvia should not exceed 25,000, and that after the conclusion of the European War these should be recalled to Soviet Russia (*Latvian Information Bulletin*, issued by the Latvian Legation, Washington, D.C., June, 1941, p. 2).

[2] In 1925, a law was passed which permitted any minority of over 3,000 to establish a representative Cultural Council of from twenty to sixty members, with an executive committee. This council was empowered to control the educational, cultural, and charitable institutions ministering to the minority concerned. It could levy taxes, and in addition was granted certain funds from the state treasury, particularly educational subsidies. The law was one of the wisest and best administered attempts to deal with minorities in post-war Europe. See C. A. Macartney, *National States and National Minorities* (London, 1934), p. 408; A. Pullerits (ed.), *Estonia: Population, Cultural and Economic Life* (Tallinn, 1937), pp. 16–17.

Kr. 500 per person. The emigrants' surplus cash was paid into the German Legation's account with the Bank of Estonia, and shares, bonds, etc., were also deposited by the German Legation with the Bank of Estonia.

"The management, liquidation, and transfer to Germany of the remainder of the emigrants' property was left to a special German Trust Board to be formed at the German Consulate in Tallinn. It was agreed that the Trust Board, in managing, liquidating, and transferring the property, should bear in mind the economic interests of Estonia. The Estonian government undertook to assist in the peaceful realization of the property, to avoid any losses through hurried sales. The transfer of the proceeds to Germany is to be done in such a manner as not to injure Estonian balance of payments and economic life."[3]

The German minority in Latvia was larger and the amount of property affected, especially industrial establishments, was much greater. The provisions were similar to the Estonian agreement. A special trustee society (*Umsiedlungs-Treuhand-Aktiengesellschaft* [U.T.A.G.]) was created, subject to the Latvian law in regard to joint stock corporations.[4] This society was to be the sole representative of the emigrant before the Latvian courts, government departments, etc., and above all was to supervise the transfer of funds. Movable property might be taken along, or deposited with the Latvian customs authorities for subsequent export until March 15, 1940, or sold. Certain movable objects which could not be taken away (works of art and rare objects of historical value) were to be deposited with the U.T.A.G. by May 15, 1940, although this date did not apply to stocks and bonds. Rural property was to be liquidated by January 31, 1940, the Latvian government issuing bonds for the property in accordance with a valuation agreed upon by the U.T.A.G. and Latvian officials. Immovable property in the cities which had not been turned over to the U.T.A.G. by December 31, 1941, was to be liquidated in accordance with an agreement to be negotiated later.

The agreements provided that the emigration from Latvia should be completed by December 15, 1939, and that from Estonia by January 15, 1940, although the latter date was changed to March 1, 1940. The evacuation was begun with the Reich Germans, that is, those who, though living in the Baltic states, were already German citizens. From the beginning, the foreign section of the N.S.D.A.P. took an active part in the whole procedure.[5] Party officials were sent to Riga and Reval, and they coöperated with the regular diplomatic officers in working out the details of the evacuation agreements. In Berlin, a bureau for returning Germans, with a special Baltic section, was created within the foreign section of the party. This bureau established subsections in Gothenhafen (Gdynia) and Posen. Within the Baltic states the party officials were able to work with the leaders of the well organized German groups, for over the centuries German minorities had perfected their organizations. Voluntary workers were organized by the Baltic Germans, and a voluntary labor service, recruited from the youths of the 1913–19 classes, was instituted.

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[3] "Chronique," *Revue Baltique*, Vol. 1, pp. 144–145 (Feb., 1940).

[4] For the text of the German-Latvian treaty, see *Latvian Information Bulletin*, Dec. 21, 1939.

[5] Information with regard to the set-up of the evacuation procedure as here described was obtained from Hans Krieg, *Baltischer Aufbruch zum deutschen Osten* (Berlin, 1940), pp. 26–53.

Little information is available as to what arguments, allurements, and pressures the people were subjected to. No doubt fear of a Communist occupation played a part. But all in all it was a voluntary exodus, for certainly neither the Estonian nor Latvian government exerted any pressure to get the Germans to leave. A shortage developed in crating material, and a supply was rushed from Germany. Even several tons of nails were flown to Latvia. Overnight, suitcases, trunks, crates, baskets, and materials of all description were piled high on the docks of Riga and Reval. Livestock in many instances was also taken along, and more than 6,000 head of cattle were exported from Latvia. Much equipment, of course, was sold, some was left to be liquidated later, and many gifts were made to good Latvian or Estonian friends.

Not only did whole families, congregations, villages set out *en masse*, but orphanages and old people's homes were also taken along. Special arrangement had to be made for state wards, the sick, women with babies, the aged, etc. In Latvia, the country was divided into forty-five evacuation districts and the state placed trains at the disposal of the evacuation leaders. Systematically, people from one area after another were transported to Riga or other ports. From here as well as from Estonian ports German steamers provided transport services.[6] The cabins went to women and children, while the men slept on sacks of straw in the common rooms. The National Socialist party did not fail to provide entertainment en route, but the approved reports made no attempt to minimize the anguish and heartaches which seized individuals on leaving lands where for centuries their ancestors had fought as an advance guard of German culture.

Danzig, Gothenhafen, Swinemünde, and Stettin were the ports of entrance for the Baltic Germans. After the invariable ceremonial greeting, the process of finding quarters began. Schools, meeting halls, deaconess homes, etc., had been prepared to house the newcomers. Many were received temporarily into private homes. The majority were immediately transferred to the interior and housed there in much the same fashion. The first ship-loads went mostly to Posen, and as the numbers increased, to temporary quarters in Pomerania. Many of the aged and sick were shifted to the Baltic resorts of Heringsdorf, Ahlbeck, Bansin, and Misdroy, where they were quartered in hotels and boarding houses which only a few months earlier had been filled with summer guests. Various state and party organizations such as the S.S., the S.A., the Kraft durch Freude, and the Red Cross, directed affairs. Throughout, however, Baltic Germans as leaders of their respective organizations, and particularly of the neighborhood groups (*Nachbarschaften*), shared in the executive tasks.

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[6] "In the course of the repatriation, German ships called at Latvian ports 73 times in order to take home their blood brothers." *Latvian Monthly Bulletin*, issued by the Latvian Legation in London, Jan., 1940, pp. 2–3.

The Central Office for Immigration (*Einwandererzentrallstelle*) was set up in the city of Posen, with substations at Gothenhafen, Stettin, and for a time at Schneidemühle. Here the Reich Ministry of Interior had bureaus for registration, identification, photography, health, and citizenship; the Ministry of Finance had a bureau to look after the property of the immigrants and a branch of the Reichsbank; the Ministry of Labor had various different occupational bureaus; the Ministry of Transport, sections for transport and baggage; and finally there was "the Baltic German Immigration Advisory Bureau for the care of Returning Germans." These bureaus were staffed with state and party officials, but also in large part with Baltic Germans.

Every head of a family, woman, and child over fifteen received in the temporary quarters a large brown envelope containing forms and directions which would ultimately lead to a permanent place of residence. The registration form called for name, family status, place and date of birth, occupation, religion, previous citizenship, Aryan antecedents, parentage, names of children, date and place of emigration, and present residence, and was presented to the registration bureau. After this was inspected, the individual received an identification number from the next bureau and thereupon was immediately photographed with this number as his choicest possession. Officials went to hospitals and homes to photograph those who could not come to the Central Office. The physical examination and inquiry into hereditary background followed. All received an X-ray examination, which attests to a rather high standard of physical examination. The bureau for citizenship was not merely a rubber-stamping agency, for a number of native Estonians and Latvians, as well as individuals without definite citizenship, had received permission to join the emigration. Special inquiry as to German antecedents was made, and the normal course called for immediate issuance of citizenship papers. The Baltic German was now entitled to all the privileges, but also all the duties, of a Reich citizen.

Next came an examination, by the officials of the Ministry of Finance, of the form relating to property. Naturally many problems arose here, especially with regard to property which had been left behind. Places to exchange for marks what currency had been brought along were of course established in many localities, and provided immediate pocket money. Immigrants could exchange their credits which were tied up in the general liquidation account at the favorable rate of 60 R.M. for 100 Latvian lats, or 80 R.M. for 100 Estonian crowns. But many people had no funds; in other cases their property was so involved that they had no clear bills of credit on hand. In order to finance the establishment of these individuals, the German government made credit advances, and a group of banks under the leadership of the Dresden Bank provided more than 100,000,000 R.M. In addition, credit in materials, for example, trade tools, agricultural machinery, fodder, or grain were provided.

The occupational bureau had one of the heaviest and most varied tasks. It had sections for handicrafts and trades, agriculture, commerce, technical and other professions, officials, and occupations for women. In addition, there was an advisory division for youths in regard to occupations and educational questions. *Rentiers* also had a special classification. Information with respect to former occupations, aptitude, training, etc., was noted on a card. At the same time, information was recorded with regard to the need for dwelling space.

In general, it took an individual from three to four hours to be "sluiced" through the above procedure, and about a thousand individuals were taken care of in a day.[7] Then the wait for final location was begun. The general rule was that families, groups, and communities were to live together in the Reich as in their former homes. In locating members of the professions, as for example doctors and lawyers, the existing professional organizations were consulted. The settlement of peasants was relatively the easiest, for there was plenty of land available in the territory taken from Poland. The exigencies of war economy demanded that many individuals accept new occupations, at least temporarily. They were, however, free to try to find other occupations more to their liking, but with the important restriction that they must remain in the territory set aside for their settlement, the Reichsgauen Danzig-West Prussia or Wartheland.

At the Central Office in Posen, the key information center was established. Here a card catalogue showed the whereabouts of each individual, the location of his baggage, property, etc. Here also all mail was sorted; for apparently the Baltic Germans were always able to remain in touch with those who remained behind or had not yet been able to emigrate.

From Latvia, 46,921 Germans and 887 persons of other nationality and individuals not possessing national passports availed themselves of the opportunity to acquire German citizenship. In addition, 200 German Latvians registered at Latvian consulates abroad as desiring to transfer their citizenship.[8] Up to January 1, 1940, 10,849 Germans and about 900 of other nationality left Estonia. Probably four or five hundred more left in January and February, although the exact figure is not available.[9]

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[7] Krieg, *Baltischer Aufbruch*, p. 43; see also Hans Krieg (ed.), *Baltenbrief zur Rückkehr ins Reich* (Berlin, 1940), pp. 68–69.

With this exodus, if deductions are made from the last census figures, it would appear that about 4,000 Germans remained in Estonia and 12,000 in Latvia. With the complete absorption of the Baltic states into Russia in July–August, 1940, Germany undertook negotiations with Moscow with regard to the possible return of those who remained behind, as well as for the 30,000 Germans in Lithuania.[10] How the Russian occupation of the Baltic states affected the carrying out of the complicated financial agreements negotiated by the former Estonian and Latvian governments is not known. Details have never been published, but we are told that Part II of the German-Russian trade agreement of January 10, 1941, dealt with "the settlement of mutual property claims concerning Lithuania, Latvia, and Estonia, and with the migrations of populations. . . . " German citizens and persons of German nationality, if they desired, could leave for a period of two and one-half months after the signature of the agreements. On January 14, 1941, it was announced in Berlin: "Germans coming from Lithuania will . . . number about 45,000. Another 12,000 are expected from Latvia and Estonia."[11] These transfers, as well as others from Bessarabia, Bukowina, and Russian-occupied Poland, presumably were largely carried out before the outbreak of the Russo-German war.

How efficiently this modern translocation of Germans was accomplished and with what satisfaction to the individuals concerned, remains a subject for further inquiry. The fact that the original Baltic exodus was a friendly "return," sought after by the Reich officials, no doubt eliminated many of the hardships usually associated with the deportation or exchange of minorities. The other side of the picture—the fate of the Polish inhabitants of the region assigned to the Baltic Germans—we do not know. Many fled before the invading German armies; others no doubt have been deported. On this aspect of the problem, no definite and reliable information is at hand; but eventually, too, the history of this sad episode will be written.

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[8] *Latvian Information Bulletin*, Jan. 31, 1940, p. 2.

[9] "Chronique," *Revue Baltique*, Vol. 1, p. 145 (Feb., 1940).

[10] *New York Times*, Aug. 26, 1940.

[11] *Ibid.*, Jan. 11, 15, 1941.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

After carefully considering a variety of factors which in a war year inevitably affect such a decision, the Executive Council of the American Political Science Association finally agreed upon Chicago as the place for the thirty-eighth annual meeting. The dates are December 28–30, with headquarters probably at the Palmer House. The first day will again overlap with the annual meeting of the American Society for Public Administration, and a number of joint sessions are scheduled.

The task of program-making has not since 1918 been attended with so many uncertainties. As a first step, the program committee (Harwood L. Childs, Princeton; Denna F. Fleming, Vanderbilt; Clarence E. Ridley, Chicago; Francis G. Wilson, Illinois, and Harold W. Stoke, Wisconsin, *chairman* sent out a large number of inquiries to members of the Association requesting reports on significant research in progress, suggestions for appropriate topics for section and round table meetings, and comments on the organization of the program. There emerged from these replies several general principles which the committee adopted for its guidance: (1) The program should not be finally crystallized until the latest moment possible. (2) The distinction between round table and section meetings should be retained. (3) No round table or section should be scheduled for more than one meeting. (4) Although efforts should be made to represent the perennial interests of political scientists, the meetings should be devoted principally to the issues of war and peace. Finally, (5) there was general agreement that the number of separate meetings should be reduced to avoid the over-division of the membership and to reaffirm the common interests and unity of political scientists as a group. Each chairman is being urged to observe as far as possible the "one-listing" rule, limiting the formal participation of members to a single round table or section meeting, and, in order to encourage spontaneous and wide participation, to keep the formal speeches and papers within reasonable number and length. Some of these principles are departures from program construction for recent meetings. An experiment should enable the Association to settle upon the most appropriate type of program for its future meetings.

With due allowance for the tentative character of topics and of acceptances by those invited to participate in the program, the following round tables and sections may be listed: Monday, December 28: Sections: (1) Administrative Law (leader to be announced); (2) War-time Management of Opinion, Peter H. Odegard, Amherst; (3) Russian-American Relations (leader to be announced); (4) Personnel Administration (leader to be announced jointly with the American Society for Public Administration);

(5) Congress as a Legislative Body—Reports from the Galloway Committee, Columbia Associates, and Committee on Public Administration, Ernest Griffith, Congressional Library. Round tables: (1) Legal and Social Responsibilities of Labor Unions, Alpheus T. Mason, Princeton; (2) The Maintenance of Adequate Armed Services in a Democracy, Grayson L. Kirk, Columbia; (3) Central Control of the Administration of Justice (joint meeting with American Society for Public Administration), J. G. Heinberg, Missouri; (4) The Local Organization of Civilian Defense, J. C. Charlesworth, Pennsylvania.

As a further variation in the program, Tuesday morning, December 29, will be given over to three general sessions, each devoted to a subject of vital interest to a large proportion of the membership: (A) Prospects for the Revival of Liberalism in Europe, (1) Germany, Hans Simon, (2) Italy, H. R. Spencer, (3) France, Walter R. Sharp; P. B. Potter, chairman; (B) Developments in Representative Government in the United States, (1) Lindsay Rogers, (2) George Gallup; Thomas M. Barclay, chairman; (C) Problems of Civic Education in the United States, John M. Gaus, chairman.

Round table meetings will be resumed on Tuesday afternoon as follows: (1) The Treatment of Enemy Aliens in the United States, Marshall E. Dimock, Department of Justice; (2) The International Politics of the Lend-Lease Program (leader to be announced); (3) Problems of the Pacific (leader to be announced); (4) Political Aspects of Fiscal Policy (leader to be announced); (5) Geopolitik Today, Brooks Emeny, Cleveland Council on Foreign Policy. Wednesday morning: (1) Constitutional Law, The Executive and Treaty-Making, Edwin M. Borchard, Yale; (2) Inter-American Affairs, Graham H. Stuart, Stanford; (3) Collaboration of English-Speaking Peoples, J. Duncan Hall, Harvard; (4) International Law, International Recognition of Human Rights, Quincy Wright, Chicago; (5) Political Theory, War and Personal Liberty, Francis G. Wilson, Illinois.

In addition to the meeting for presidential addresses, two other general meetings now planned will be of special interest. The first is a luncheon session scheduled jointly with the Woodrow Wilson Foundation and the American Society for Public Administration to celebrate the birthday of Woodrow Wilson (December 28). A nationally known speaker who prefers not to be announced this far in advance has agreed to address the meeting. A second memorial meeting will focus attention upon the political philosophy of William James (1842–1942), and will center upon the theme, "Pragmatism and its Current Political Implications." Dean George H. Sabine of Cornell and other prominent scholars will speak.

Few breakfast meetings for special groups have been provided in the program. If those who are responsible for such groups would like such meetings scheduled, they should get in touch with the chairman of the program committee as soon as possible.—HAROLD W. STOKE, *chairman*.

A Committee on Changes in Political Science Courses in Colleges and Universities in War-time, appointed by President Anderson, includes the following: Evron M. Kirkpatrick (University of Minnesota), chairman, Ethan P. Allen (Iowa State University), Rodney L. Mott (Colgate University), Kenneth O. Warner (University of Tennessee), and Francis O. Wilcox (Office of Coördinator of Inter-American Affairs). The committee will prepare a report for the U. S. Office of Education War-time Commission, and will be glad to receive information about curricular changes made in political science departments, or suggestions as to adjustments that should be made.

Professor Hans Kelsen has accepted an appointment as professor of political science at the University of California (Berkeley) for the academic year 1942–43.

Professor Floyd W. Reeves secured part-time release from his duties in Washington in order to teach at the University of Chicago during the summer quarter.

Professor Pitman B. Potter, who in September will assume his new post at Oberlin College, gave courses in international organization and the history of diplomacy at the University of Chicago during the summer quarter.

Dr. Donald H. Webster, director of the Bureau of Governmental Research, University of Washington, is on leave for "the duration" to serve as attorney for the Rationing Division, Office of Price Administration, in Seattle.

At Stanford University, during the summer quarter, Professor Harold S. Quigley, of the University of Minnesota, offered courses in international organization and international relations in the Far East.

Dr. A. B. Butts, chancellor and professor of law at the University of Mississippi, was ordered to active duty as major in the Judge Advocate General's Department, U. S. Army, effective July 1. He has held a commission in the reserve corps for the past ten years.

Professor Edwin A. Cottrell, of Stanford University, served during the past year as president of the San Francisco Bay Area chapter of the Society for Public Administration.

Professor Harvey Walker, of Ohio State University, now a major in the U. S. Army, has been transferred to the position of Finance Officer, 24th Wing, Air Force Ferrying Command, and has left the United States for duties abroad.

Professor William O. Farber has resigned at the University of South Dakota to accept appointment as state price officer for the OPA in South Dakota. His place at the University was filled during the summer by Dr. H. H. Trachsel, of the State University of Iowa.

Professor John W. Masland, of Stanford University, has been appointed to the Division of Research of the Department of State, and Professor Thomas S. Barclay is a member of the Enemy Alien Hearing Board for the Northern California District.

Professor John M. Gaus, of the University of Wisconsin, gave courses at the University of California (Berkeley) during the recent summer session. He will spend the coming academic year at Harvard University upon studies related to the future development of research and instruction at that institution in the field of planning.

At Louisiana State University, Dr. Alden L. Powell has been promoted to a full professorship and Dr. Donald H. Morrison to an assistant professorship. The latter is on leave as an analyst on the staff of the Committee on Records of War Administration in the Bureau of the Budget.

Professor Carl M. Frasure, of the University of West Virginia, has been granted an indefinite leave of absence and has assumed the post of state director of the West Virginia OPA.

Dr. Paul A. Palmer, who during the past year served as acting associate professor at Stanford University, has returned to Kenyon College, where he has been promoted to a full professorship and will head the recently created department of political science.

Dr. R. W. VanWagenen, instructor at Yale University, has been granted leave of absence to serve as instructor in the Field Artillery School of the U. S. Army at Fort Sill, Oklahoma, with the rank of first lieutenant.

Professor Charles Aikin is on leave from the University of California and is serving as state price executive for northern California under the OPA.

Professor Lloyd M. Short, of the University of Minnesota, is serving during the summer months as senior review and negotiations officer on the staff of the Committee on Administrative Personnel of the U. S. Civil Service Commission.

For work primarily in the field of constitutional law, Dr. Joseph P. Pollard has been added to the political science staff at the University of Denver, with the rank of assistant professor.

At the University of Chicago, Mr. Ernest B. Price has taken leave from his duties as director of International House to accept an appointment in the Office of the Coöordinator of Information, and Professor Philip W. Ireland has accepted a consulting appointment with the Board of Economic Warfare for the summer months.

Professor A. N. Christensen, of the University of Minnesota, left early in the summer for a six-month's teaching assignment in Argentina. His visit there is sponsored by the Committee for Inter-American Artistic and Intellectual Relations of the Office of Coördinator of Inter-American Affairs. He will give a course on American government at La Universidad Nacional del Litoral at Santa Fé, Argentina, and will lecture also at other Argentine universities.

Professor James T. Watkins, IV, of Ohio State University, is spending the summer in intensive Chinese language study at Harvard University. He has received a Social Science Research Council training fellowship, likewise for Chinese study, but will not take it up until June, 1943, because of commitments at Ohio State.

At Colorado College, Dr. Edith C. Bramhall has retired and by vote of the board of trustees has been given the title of professor emerita. She plans, when conditions are favorable, to spend a year studying political conditions in Spanish America.

Professor Earl G. Latham, of the University of Minnesota, has accepted a staff position with the new Committee on the History of Administrative Institutions, located in the Administrative Management Division of the Bureau of the Budget. His special project is man-power mobilization.

Mr. Edwin M. Duerbeck is on leave from the Federal Public Housing Authority, having been called to active service as lieutenant in the Navy. He is to spend two months at Quonset Point, R. I., at the Bureau of Aëronautics Officer Training School preparatory to administrative duties in the Bureau.

Professor William Beard has been granted a leave of absence by the University of Wisconsin and is now stationed in California as an instructor in the U.S. Army Air Forces.

Professor Lashley G. Harvey has been granted a leave of absence by the University of New Hampshire and has entered upon aviation duties in the U.S. Navy.

Professor Thorsten V. Kalijarvi, of the University of New Hampshire, has been appointed acting executive director of the New Hampshire State Planning and Development Commission. He will continue part-time teaching.

Dr. George F. Rohrlich, formerly of the Brookings Institution, has been appointed instructor in the division of social studies at Sweet Briar College, Virginia.

A book on the British Commonwealth at war, prepared under the auspices of the Bureau of International Research of Harvard University and Radcliffe College, and edited by William Y. Elliott and H. Duncan Hall, will be published shortly. The editors have contributed a number of the chapters. Mr. Duncan Hall has joined the Secretariat of the British Raw Materials Mission at Washington.

During the first half of the recent summer session at Michigan State College, Professor Harold M. Vinacke, of the University of Cincinnati, gave courses on comparative government and international relations.

Beginning in June, the department of political science at the University of Tennessee has assumed research and service functions for the Tennessee Municipal League.

Dr. William Cargo, of the University of Michigan, has accepted an appointment at Colorado College.

Mr. John D. Hall, recently a graduate student at Syracuse University, has been appointed to an instructorship at the University of Maryland.

Mr. D. Barlow Burke, instructor at the University of Pennsylvania and an assistant district attorney in Philadelphia, has been commissioned a lieutenant in the U. S. Navy and is now in active service.

At the University of Wisconsin, Dr. Lorentz H. Adolfson has been promoted to an assistant professorship in the Extension Division. He will also offer one or two courses in the resident department.

Mark DeWolfe Howe, dean of the Law School of the University of Buffalo, has signed a contract with the Harvard University Press for a biography of the late Justice Oliver Wendell Holmes, which will probably be in two volumes, and is expected to be definitive. Dean Howe edited the *Holmes-Pollock Letters* published a year ago. In writing the biography, he will have access to the great collection of Holmes manuscripts now on deposit in the Harvard Law School Library, and also to various other materials in private hands.

Dr. John D. Millett, formerly with Columbia University and the Committee on Public Administration of the Social Science Research Council, has taken leave of absence from the National Resources Planning Board to enter military service. He has been commissioned a major in the Army of the United States and assigned to Headquarters, Services of Supply, War Department, Washington, D.C., where he will be in charge of keeping a record of the administrative development of the Services of Supply.

In the absence of Dr. A. D. H. Kaplan, from the University of Denver, Dr. Roy E. Brown, chairman of the department of political science, has been made acting director of the department of government management—an establishment receiving an annual grant from the Alfred P. Sloan Foundation and engaged in training ten graduate students in the field of local government. The University has lately organized a Government Center whose function will be to correlate its work in the fields of government and public administration, research, public opinion, public welfare, and planning. It also has received as a gift a building adjacent to the Civic Center which will house the several departments dealing with governmental problems.

At the University of Washington, the Seventh Annual Institute of Government was held between June 23 and June 26. Among other features, Dr. H. B. Hazard, of the Immigration and Naturalization Service, conducted a round table on "War-time Problems Concerning the Alien".

Since July 1, the office of the Committee on Public Administration of the Social Science Research Council has been at 726 Jackson Place, Washington, D. C., instead of 261 Broadway, New York. Messrs. Charles S. Ascher and Patterson French have resigned from the staff of the Committee to accept posts with the national government. As chairman of the committee, Professor William Anderson, of the University of Minnesota, is now in active charge of its work, but will retain residence at the University and give half-time to teaching. Dr. Joseph McLean is in charge of the Washington office as full-time member of the staff.

An Institute of Administrative Management for state agricultural extension directors and supervisors was held in the Center for Continuation Study at the University of Minnesota from July 27 to August 8. Professors William Anderson, C. C. Ludwig, and Lloyd M. Short, of the University, Mr. Louis Brownlow, of the Public Administration Clearing House, Mr. William A. Jump, director of finance of the U. S. Department of Agriculture, and Mr. Gordon R. Clapp, general manager of the Tennessee Valley Authority, served as instructors or lecturers.

Under the chairmanship of Professor Cortez A. M. Ewing, the fifth Institute of International Relations, on "War and Reconstruction," was held at the University of Oklahoma, June 14–20. Among others appearing on the program were Dr. Carl J. Hambro, the Norwegian editor and parliamentarian; Professors Quincy Wright, of the University of Chicago, and Arthur Upgren, of the University of Minnesota; and Dr. Hu Shih, Chinese ambassador to the United States.

At the Fourth Conference of Midwest Political Scientists, held at Spring Mill State Park, Indiana, May 15–17, the following were elected to the Managerial Committee for the coming year: Howard White (chairman), Harold Vinacke, Arthur W. Bromage, Oliver P. Field, Herman H. Trachsel, C. S. Lowrey, William Combs, C. M. Kneier, and Harold Zink. Appointed to the Program Committee were: Llewellyn Pfankuchen (chairman), Charlton Chute, Roy Sherman, John Stoner, Frank Klingberg, and James Milliken. The group decided that the Fifth Conference should be held in May, 1943, if at all feasible.

An Army School of Military Government was opened at Charlottesville, Va., on May 11, using buildings of the University of Virginia, and planned to train officers for future detail in the work of military government. The sixty original students (with more to be added) were selected from all branches of the Army, being engineers or lawyers with special qualifications or persons chosen because of experience in national, state, or local government. Included in the regular faculty are Professors Joseph P. Harris, of the University of California, Arnold Wolfers, of Yale University, and Hugh Borton, of Columbia University; and special lecturers have included Professors Charles C. Hyde and Philip C. Jessup, of Columbia University, Max Lerner, of Williams College, W. Y. Elliott, of Harvard University, and N. J. Spykman, of Yale University.

The Fourth Annual Meeting of the Pennsylvania Political Science and Public Administration Association was held at Harrisburg April 24–26, with Professor C. C. Rohlfing presiding. Dr. Elmer D. Graper, of the University of Pittsburgh, arranged an excellent program opening with a reception for Mrs. Arthur James, wife of the governor, on April 24. Round tables were held on state and local administration, international relations, and political parties. The meetings on political parties were participated in by both the Republican and Democratic state chairmen and by the county chairmen of Philadelphia and Allegheny counties. The Association voted to issue supplements to its published *Bibliography of Pennsylvania State and Local Government*, and to continue publication of its monthly newsletter. Dr. John H. Ferguson, of Pennsylvania State College, and Dr. Dorothy A. Shields, of Pennsylvania College for Women, were elected to the Executive Council.

Jesse Siddall Reeves, professor emeritus at the University of Michigan and president of the American Political Science Association in 1928, died on July 7 after a lingering illness. Called to Michigan in 1910 as chairman of the department of political science, Professor Reeves held that post until 1937. In 1931, he was appointed William W. Cook Professor of American Institutions and continued teaching until his automatic retirement from the faculty last February at the age of seventy. A recognized authority on international law, Professor Reeves on a number of occasions represented the United States as a delegate to conferences in Europe and Latin America. He was an inspiring teacher and was held in great esteem by his colleagues. At a banquet given in his honor upon the occasion of his resignation as chairman of his department in 1937, the following tribute was read: "We, your colleagues, desire to express our deepest appreciation of the services which you have rendered in your position during a period of twenty-six years. Under your inspiring leadership the department has achieved national recognition. Your unswerving devotion to the cause of true scholarship has set a high standard for all of us to follow. In addition, your services to the nation have brought honor and credit to the University and to the department." A more extended memorial will appear in a later issue of the REVIEW.

The many friends of Dr. Harold J. Tobin, professor of political science at Dartmouth College, deeply regret his death on June 17 at the age of forty-eight. He was a graduate of Dartmouth, with a doctor's degree from Columbia and an advanced degree in social science from the University of Lausanne. He twice received Carnegie fellowships in international law and studied at Geneva under a Cutting fellowship from Columbia. At various times he was a member of the American Committee of the League of Nations Association in Geneva, a lecturer and writer for the Foreign Policy Association, and assistant professor at Louisiana State University. He began his short but successful teaching career at Dartmouth in 1933, was co-organizer of a movement to encourage Dartmouth men to enter active political life, and became the first chairman of the American Defense Dartmouth Group in the present war period. He was the author of *The Termination of Multipartite Treaties* (Columbia University Press, 1933), co-author of *Mobilizing Civilian America* (Council on Foreign Relations, 1940), and author of various articles on international relations. During the past two years, he was chairman of the Dartmouth department of political science. Scholarly, energetic, ambitious, and courageous in a long struggle against ill-health, he was highly respected and widely known in the profession and in the Association.

Under a constitutional mandate requiring submission of the question every sixteenth year, the people of Michigan will, in November, vote on the issue of a general revision of their constitution. Late in its last regular session, the legislature passed a bill setting up a study commission, with an appropriation, to determine the desirability of constitutional revision at this time. The measure was vetoed, primarily on the ground of economy. In the autumn of 1941, however, Governor VanWagoner, under authority of a statute enacted in 1931, created a Constitutional Revision Study

Commission modeled after that suggested in the legislative bill, but without an appropriation. Limited funds, nevertheless, were made available, chiefly by certain state departments and institutions of higher learning. The Commission, whose chairman was Justice George E. Bushnell of the state supreme court, was composed of representatives of the state admintrative departments, the legislature, institutions of higher learning, the A. F. of L. and the C. I. O., the state bar association, the farm bureau and grange, industry, women's organizations, religious organizations, and the two major parties. The chairman appointed twelve sub-committees and assigned to each a portion of the existing constitution for study and for recommendation of changes. At its final meeting, on June 23, the Commission recommended by a substantial majority the calling of a constitutional convention this fall. Under provisions of the constitution, a convention cannot actually be assembled, however, until September, 1943, even if a favorable vote is recorded this November. More specifically, the Commission suggested that such a convention consider the following constitutional changes: (1) revision of the searches and seizures section of the bill of rights, and addition of a section giving labor the right to organize; (2) increase of the term of office from two to four years for elective state and local officers, with also increase in pay for legislators and state officials; (3) authorization of the secretary of state to redistrict the state and reapportion members of the legislature, under constitutional regulations; (4) elimination of the uniformity clause in taxation and authorization of a graduated income tax; (5) legislative control over hours of labor, rents, and debt moratoria in times of emergency; (6) home rule for counties, with legislative power to provide for the merger or dissolution of counties and townships and for revamping administrative organization within these units of government; (7) elimination of justice of the peace courts; (8) selection of the state superintendent of instruction by an enlarged elective board of education; and (9) establishment of a commission on elections to supervise and enforce the laws governing state and local elections.—W. H. COMBS.

Authorized to continue its inquiry by the Executive Council at the 1941 annual meeting, the American Political Science Association's Committee on Congress has been holding weekly meetings in Washington, D. C., during 1942 to date. These meetings, which are well attended by the members, are customarily held in a private dining room at the Library of Congress, where the chairman has his headquarters. On these occasions, the Committee usually has as its guest some member of Congress with whom legislative problems are informally discussed. Out of these interesting and fruitful discussions, as well as the personal interviews and independent research of the chairman, the Committee is beginning to formulate a statement of the legislative problem, a diagnosis of the difficulties confronting

Congress as an institution and congressmen as individuals, and some preliminary ideas concerning methods of increasing the effectiveness of Congress and enhancing its prestige. Space is lacking here, and it would probably be premature, to indicate the various lines of action that have been suggested to the Committee for its consideration. We will submit a fuller report of our findings and recommendations at the annual meeting of the Association next December. Suffice it to say that we have been examining the changing place of Congress in the American scheme of government, the reasons for its alleged decline, its operation in war-time, its relations with the executive branch, proposed changes in legislative organization and procedure, the development of unforeseen usages, the legislative activities of administrative departments, the staffing of Congress, congressional pressures and chores, etc. The timeliness of this inquiry is attested both by the large amount of attention Congress is currently receiving in the press and in periodicals, as well as among scholars, and by the approach of the congressional elections.—GEORGE B. GALLOWAY, *chairman.*

At a joint conference with the Committee on Government of the Social Science Research Council, held in New York City, April 18–19, the Committee on Research of the American Political Science Association set up and formulated its program of action—the members of the Committee now being Ernest S. Griffith (*chairman*), Robert D. Leigh, Benjamin E. Lippincott, Karl Loewenstein, Walter R. Sharp, and Carl B. Swisher. A proposal to set up panels in various subject-fields constituted the major immediate interest of the Committee. It was also decided to take responsibility for contributing research news and notes to the REVIEW from time to time. The Committee found its deliberations very much dominated by the war and its aftermath. With priorities applying to the time of scholars as well as to raw materials, it was felt that more than usual care needs to be given to the direction of the research efforts of the Association. The war represents a crisis in political institutions. It has thrown into the melting pot many preconceived ideas in political science and may result in a considerable degree of confusion in its subject-matter. Accordingly the Committee felt that the time had arrived for enlisting the efforts of a large number of scholars within the profession in a kind of audit of the whole area which political scientists regard as their own. Such an audit should direct itself to a discovery of the areas where penetrating thought and research are most needed. It may also search for those basic principles in political science which arise out of analyses in special or narrower fields. Such tasks require the combined judgment and activity of all members of the Association. The Committee views its functions as primarily those of helping to organize such combined judgments. The specific procedure adopted at the outset is the creation of panels of scholars in major subject-fields within the broad area of political science. Such fields will not be, and should not be, rigidly drawn. Wherever there is a definite focus of interest, it would seem to be desirable to set up such a panel. Suggestions in this regard will be welcomed by the Committee. Each panel will consist of from ten to twenty-five, selected to include both younger and older members of the profession. The first function of the panel is to formulate a research strategy for its special field. Individual panel members are asked to give this problem their best thought and contribute the results to the secretary of the panel. This report may consist merely of a list of important frontier problems, or it may assume the form of an essay on the present status of scholarship in the field. In any event, the result to be aimed at is the assembling of basic ideas for a subsequent synthesis. What is wanted at this stage is much more than suggestions for thesis subjects. Much of what the Committee hopes to receive from the panel members could better be described as "penetrating thought" than as subjects for specific research. It is our belief that the more general appraisal of this type is one of the best means of giving direction to scholarship. It is planned to circulate the written contributions of the panel members sometime prior to the next annual meeting. It is further planned to have a conference of each panel sometime during the meeting. In all probability, this will be an open session with three or four of the panel members carrying the main burden of the discussion, but with all others participating who are willing and able to do so. Such a discussion should prove attractive to graduate students and others in the field and might prove one of the best means for implementing the work of the panel. At some time subsequent to the annual meeting, the secretary of the panel will prepare a summary or synthesis of the written memos and of the discussion. Such a summary will be circulated among the panel members, and in all probability will find some place for formal publication. The Committee and the panel will then be in a position to work out a program to give effect to its recommendations. For the first year, it seems wise to the Committee to start on a fairly small scale. Four panels only are contemplated at this time. These are: (1) Public Law, Carl B. Swisher, Convener; (2) Political Theory, Benjamin E. Lippincott, Convener; (3) Comparative Government and Politics, Karl Loewenstein, Convener; and (4) The Rôle of America in Post-War International Life, Walter R. Sharp, Convener. Further developments will await the experience of these panels.—ROBERT D. LEIGH.

POLITICAL SCIENTISTS IN THE WAR*

The Committee on Personnel Service of the American Political Science Association was charged by the 1941 meeting in New York with the duty of collecting information concerning the participation of political scientists in war work. These data were to be used by the Committee in facilitating the reabsorption of qualified teachers into the profession upon the conclusion of the conflict. It was thought also that they would constitute a partial service record of the profession.

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* Compiled under the direction of Major Harvey Walker, chairman of the Committee on Personnel Service.

The extent of participation by political scientists in military activities and in civilian work in connection with national defense is indicated by the paragraphs which follow. In addition to these reports, negative replies have been received by the Committee from forty-four institutions. No doubt there will be many additions to this list, both among the staff members of the institutions included in this report and among those who sent negative replies to the original inquiry. This information is presented as a progress report.

Brooklyn College. Faculty: Gabriel A. Almond, Office of Facts and Figures; Joseph W. Scott, U. S. Navy.

University of California. Faculty: Charles H. Titus, Headquarters, Western Defense Command and Fourth Army, Presidio of San Francisco, Calif. *Ph.D.'s:* Gerald Jordan, Office of Price Administration; Charles Kummer, Placement Officer, War Production Board; Foster Sherwood, War Production Board.

University of Chicago. Faculty: Harold F. Gosnell, Chief, Clearance and Coördination Section, Division of Field Operations, Office of Price Administration; Walter H. C. Laves, Director of Division on Inter-American Activities in the United States, Office of the Coördinator of Inter-American Affairs; Natan C. Leites, Supervising Analyst, Foreign Broadcast Monitoring Service, Federal Communications Commission; Floyd W. Reeves, National Resources Planning Board. *Ph.D.'s:* William B. Ballis (on leave from Ohio State University), Office of Coördinator of Information; Claude E. Hawley (on leave from University of Florida), First Lieutenant, U. S. Army; David B. Truman (on leave from Cornell University), Office of Emergency Management.

University of Cincinnati. Faculty: J. Harold DeNike, Philadelphia Office of Price Administration.

Clark University. Faculty: George H. Blakeslee, Lecturer to various groups in the armed services; Clarence F. Jones, Lecturer at various forts and army posts in the East; Samuel Van Valkenburg, Lecturer at various forts and army posts in the East. *Ph.D.'s:* Paul M. Gregory, Assistant Economist in Economics Division of the Office of Coördinator of Information; Thomas Kinsella, Economist in Office of Price Administration; Theodore F. Marburg, Post-War Division of U. S. Bureau of Labor Statistics; Gerald A. Matchett, Office of Price Administration; Gustav T. Schwenning, Head of Business Division, E.S.M.D.T.

Columbia University. Faculty: William W. Fitzhugh, Jr., Ensign, U. S. Navy; Luther H. Gulick, Office of Organizational Planning, War Production Board. *Ph.D.'s:* Donald Blaisdell, State Department; Robert H. Connery, Lieutenant, Senior grade, U. S. Navy; Patterson H. French, Office of Price Administration; Irving Friedman, Division of Monetary Research, Treasury Department; Kenneth Hechler, Bureau of the Budget; L. Larry Leonard, Division of Monetary Research, Treasury Department; Oliver Lissitzyn, Office of Coördinator of Information; John D. Millett, National Resources Planning Board; Peter Odegard, Treasury Department; Durward V. Sandifer, State Department; James Simsarian, Office of Price Administration; Albert C. F. Westphal, Ensign, U. S. Navy.

Denison University. Faculty: Hugh Kelso, Infantry, U. S. Army.

Fordham University. Faculty: James M. S. Waring, Advisor to Stacy May, Office of Production Management. *Ph.D.'s:* Charles J. Walsh, Commodity Credit Corporation; Charles O'Neil, Chaplain, U. S. Navy.

George Washington University. Faculty: John W. Brewer, 1st Lieutenant, U. S. Army.

Georgetown University. Faculty: William Culbertson, U. S. Army Intelligence; James T. Lowe, Research Staff of Air Corps, U. S. Army; Marlin S. Reichley, R.O.T.C. Unit, Georgetown University.

Harvard University. Faculty: Rupert Emerson, Office of Price Administration; Merle Fainsod, Deputy Administrator, Office of Price Administration; A. Lincoln Gordon, Economic Adviser, Supply, Priorities, and Allocations Board; Bruce C. Hopper, Official position for U. S. Government. *Ph.D.'s:* Oliver Garceau, U. S. Navy; George Pettee, Office of Production Management; Roland Yound, Clerk, Senate Committee on Foreign Relations.

University of Hawaii. Faculty: William E. Williamson, Federal Bureau of Investigation, Honolulu.

Howard University. Faculty: Vincent Browne, Infantry, U. S. Army, Fort Huachuca, Arizona; R. J. Bunche, Senior Social Science Analyst, Office of Strategic Services.

University of Illinois. Faculty: Valentine Jobst, U. S. Army Air Corps, Miami Beach; *Ph.D.'s:* Leon Weaver, Civilian Personnel Field Officer, Sacramento Air Depot, McClennan Field, Calif.

University of Kentucky. Faculty: Ernest Collins, Inspector of Ordnance, Civil Service Commission, Cincinnati Office; John W. Manning, Personnel Division, Adjutant General's Office, War Department; E. G. Trimble, Special Examiner, Fair Employment Practices Committee; Amry Vandenbosch, Deputy Chief of Division of Special Information on the Low Countries and Their Possessions, Office of Coördinator of Information.

Louisiana State University. Faculty: Charles S. Hyneman, Consultant in Division of Administrative Management in Bureau of the Budget.

University of Louisville. Faculty: Kenneth P. Vinsel, Assistant to Executive Secretary of War Production Board; Francis O. Wilcox, Office of Coördinator of Inter-American Affairs.

University of Maryland. Howard M. Kline, Bureau of the Census.

University of Michigan. Faculty: Joseph R. Hayden, Board of Analysts, Office of Coördinator of Information; Lawrence Preuss, Principal Divisional Assistant, Department of State; H. J. Heneman, Military Intelligence Division, War Department.

University of Minnesota. Faculty: Marver Bernstein, Office of Civilian Defense in Office of Emergency Management; Asher N. Christensen, in Argentina, June–December, 1942, under auspices of Coördinator of Inter-American Affairs and Committee on Inter-American Artistic and Cultural Relations to lecture at the University of the Litoral and study Latin-American government and social security laws; Ivan Hinderaker, Bureau of the Budget; Earl G. Latham, Committee on Records of War-time Administration, Bureau of the Budget; Harold S. Quigley, part-time with Coördinator of Information; Lloyd M. Short, Committee on Administrative Personnel, U. S. Civil Service Commission; Donald Smithburg, Office of Facts and Figures.

University of New Hampshire. Faculty: Thorsten V. Kalijarvi, Chairman of Air Raid Wardens Division of the State of New Hampshire.

University of North Carolina. Faculty: James W. Fesler, Analyst Assistant to Executive Secretary of War Production Board.

Northwestern University. Faculty: George C. S. Benson, Director of Administrative Division in Office of Price Administration; Earl H. DeLong, special assistant to U. S. Civil Service Commission; William M. McGovern, Intelligence Division of Department of the Navy, assigned to Combined Chiefs of Staff Office.

Ohio State University. Faculty: Howard L. Hamilton, Director of Academic Training, Navy Ground Course, U. S. Navy, University of North Carolina; Harvey Walker, Finance Officer, 24th Wing, Air Force Ferrying Command.

University of Oregon. Faculty: Herman Kehrli, Bureau of the Budget.

University of Pennsylvania. Faculty: D. Barlow Burke, U. S. Navy Philadelphia; William P. Maddox, Assistant to President of Foreign Policy Association, Consultant to State Department; Jewel C. Phillips, Pennsylvania State Public Service Supervisor, Federal Works Agency, Philadelphia; Bennett M. Rich, Provost Marshal's Office, U. S. Army; Irving Segal, Price Attorney, Office of Price Administration, Philadelphia. *Ph.D.'s:* Jean R. Brownlee, Representative, U. S. Civil Service Commission, Philadelphia; Claude A. Buss, Special Adviser to High Commissioner, Manila, Philippine Islands; Leon W. Godshall, Lecturer on the Far East, U. S. Army, Bethlehem, Pa.; Joseph M. Jones, U. S. Tariff Commission; Warren H. Kelchner, State Department; Frances L. Reinhold, Research Specialist, War Production Board; Louise M. Rutherford, Deputy Attorney-General, Commonwealth of Pennsylvania; Audley H. Stephan, U. S. Army Signal Corps.

Princeton University. Faculty: William S. Carpenter, part time with New Jersey Defense Council; Paul T. Stafford, Lieutenant, U. S. Navy; George A. Graham, Bureau of the Budget; Donald S. Bussey, Office of Facts and Figures; John F. Sly, Regional Price Administrator, Office of Price Administration; Bruce H. French, Ensign, U. S. Navy; William A. Mitchell, Second Lieutenant, U. S. Army; Robert B. Dishman, U. S. Navy, V-7 Class; Adam C. Breckinridge, Ensign, U. S. Navy; Francis J. Paschal, Ensign, U. S. Navy; Clinton L. Rossiter, U. S. Navy, V-7 Class.

Queens College. Faculty: Norton Long, Division of Rent Control, Office of Price Administration.

University of Southern California. Faculty: John McDiarmid, U. S. Civil Service Commission. *Ph.D.'s:* Charles E. Piper, Federal Bureau of Investigation, Washington, D. C.; Harry Silke, Office of Price Administration, Los Angeles, Calif.

Stanford University. Faculty: Thomas S. Barclay, member of Enemy Alien Hearing Board for the Northern District of California; Charles Fairman, Office of Judge Advocate General, Washington, D.C. *Ph.D.'s:* Philip H. Taylor, Army Intelligence, War Department, Washington, D.C.

Syracuse University. Robert Grove, Statistical Division, U. S. Civil Service Commission; Sam Marble, Division of Civilian Supplies, War Production Board; John Russell, Liaison Officer, Office of Civilian Defense, Washington, D.C.

Temple University. W. Brooke Graves, Recruiting Specialist, Third U. S. Civil Service District, Philadelphia.

University of Texas. Faculty: H. Malcolm Macdonald, Ensign, U. S. Navy; Emmette S. Redford, Regional Price Executive, Office of Price Administration, Dallas, Tex.

University of Toledo. Faculty: Harold Towe, Field Artillery, U. S. Army.

University of Tulsa. Faculty: O. W. Hoop, War Department, Washington, D.C.

University of Virginia. Faculty: Henry Cumming, Intelligence Division, U. S. Army, Washington, D.C.; Robert K. Gooch, Chief of Section on Western Europe in Office of Coördinator of Information. *Ph.D.'s:* Edward S. Overman, Ensign, Intelligence Division, U. S. Navy.

University of Washington. *Ph.D.'s:* Paul Dull, Specialist on Far Eastern Politics, U. S. Navy; Harry Johnstone, Specialist on Public Administration and Constitutional Law, War Department.

Wayne University. Faculty: Bryan Rust, Non-Flight Captain in Royal Canadian Air Force.

University of Wisconsin. Edwin E. Witte, part-time with War Labor

Board; Llewellyn Pfankuchen, Division of Special Research, U. S. Department of State; William Beard, instructor at Santa Ana (Calif.) Army Air Base. *Ph.D.'s:* Frederic E. Merwin, Assistant Chief, Division of Information Channels, Bureau of Intelligence, Office of Facts and Figures; Ralph O. Nafziger, Chief, Division of Information Channels, Bureau of Intelligence, Office of Facts and Figures; Charles F. Spencer, Naval Aviation Cadet Selection Board, New Orleans, La.; Egbert S. Wengert, Administrative Officer of Staff of Regional Price Coördinator, Office of Price Administration.

Yale University. Faculty: Robert Blum, Western European Division of Office of Coördinator of Information; William G. Fletcher, Consultant in Special Planning Division of Office of Coördinator of Inter-American Affairs; Harvey C. Mansfield, Administrative Officer of Consumers' Durable Goods Division of Office of Price Administration; R. W. Van Wagenen, instructor at Field Artillery Training School, Fort Sill, Okla.; Arnold Wolfers, Special Adviser and Lecturer at Army School of Military Government, Charlottesville, Va. *Ph.D.'s:* Fred V. Cahill, Private, U. S. Army; C. S. Campbell, Jr.; State Department; Robert A. Dahl, Officer in United States Naval Reserves; W. J. A. Feuerlein, with Board of Economic Warfare; J. F. Green, with Coördinator of Information; C. Dwight Waldo, with Retail Trade and Services Division of Office of Price Administration.

DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES[1]

COMPILED BY LLEWELLYN PFANKUCHEN[2]
University of Wisconsin

POLITICAL PHILOSOPHY AND PSYCHOLOGY

Ulrich Stephen Allers; A.B., Catholic University, 1939; A.M., *ibid.*, 1941. The Development of the Ideology of the Holy Roman Empire. *Catholic University.*

William M. Barr; Litt.B., Rutgers, 1928; A.M. Columbia, 1936. The Philosophy of Woodrow Wilson. *Columbia.*

Dorothy Borg; A.M., Columbia, 1931. American-Chinese Relations, 1922–1928. *Columbia.*

Aldemar Hora Dantas de Brito; B. in Jur. and Soc. Sc., Bahia (Brazil), 1935. The Philosophy of International Law. *Catholic University.*

Julia Helen Chen; A.B., Hwa Nan College, China, 1928; A.M. American, 1937. The History and the Divisions of the Chinese Press in the United States. *American.*

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[1] Similar lists have been printed in the REVIEW as follows: V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925); XX, 660 (1926); XXI, 645 (1927); XXII, 736 (1928); XXIII, 795 (1929); XXIV, 799 (1930); XXV, 798 (1931); XXVI, 769 (1932); XXVII, 680 (1933); XXVIII, 766 (1934); XXIX, 713 (1935); XXX, 811 (1936); XXXI, 772 (1937); XXXII, 796 (1938); XXXIII, 732 (1939); XXXIV, 767 (1940); XXXV, 752 (1941).

Items which appeared in the August, 1941, list are in general classified under the same headings in the present list, and new items have been assimilated to the 1941 classification as far as possible. In cases where classification of an item has been suggested by the institution concerned, the suggestion has been followed. It is believed that each item is listed under one classification only. Names starred are carried over from the 1941 list, no more recent data having been received.

The lists printed in the REVIEW are based on information from departments giving graduate instruction in political science. Often dissertations are in progress in departments of economics, history, sociology, etc., which overlap or supplement dissertations in preparation in political science. Attention is called especially to the following lists: "Check List of Current Researches in Public Administration Reported to the Committee on Public Administration, Social Science Research Council" (mimeographed, most recent edition, December, 1941); "Doctoral Dissertations in Political Economy in Progress in American Colleges and Universities," in the *American Economic Review;* "List of Doctoral Dissertations in History Now in Progress," formerly published by the Division of Historical Research, Carnegie Institution of Washington, but since the 1938 issue as a Supplement to the *American Historical Review;* and "Higher Degrees in Sociology," in the *American Journal of Sociology.* Usually one list is published each year. These are in addition to the "List of American Doctoral Dissertations Printed in 1938," the most recent of an annual series published by the Library of Congress; and Edward A. Henry's "Doctoral Dissertations Accepted by American Universities, 1940–1941," the eighth of a series beginning in 1933–34, compiled for the Association of Research Libraries.

[2] With the assistance of Mrs. Emily Blenis Williams, hereby gratefully acknowledged.

Richard Eugene Curl; A.B., Ohio State, 1939; A.M., *ibid.*, 1940. The Impact of War on Government Publicity. *Princeton.*

Jack G. Day; B.S., Ohio State; LL.B., *ibid.;* A.M., *ibid.* The Influence of Roscoe Pound on American Jurisprudence. *Ohio State.*

Karl Wolfgang Deutsch; Dr. of Law and Political Science, Prague, 1938. The Economic Factor in Nationalism: A Technique of Enquiry Applied to Some Successors of Central Europe. *Harvard.*

Emmet E. Dorsey; A.B., Oberlin, 1927; A.M., Columbia, 1932. A Critique of Negro Political Leadership: A Series of Social Biographies. *Columbia.*

Harold L. Elstien; A.B., Syracuse, 1934. Democratic Tolerance of Anti-Democratic Organization. *Chicago.*

J. Eldon Fields; A.B., Kansas, 1934. Neo-Marxian Theories of War and Peace. *Stanford.*

Gisbert Henry Flanz; Free School of Political Science, Prague, 1936; Dipl. Sc. Pol., *ibid.*, 1939. The Doctrine of the Separation of Powers; An Historical and Analytical Study in Political Theory and Comparative Constitutional Law. *Princeton.*

Stephen S. Goodspeed; A.B., California, 1936. The Attitudes of Special Interest Groups Toward Germany, 1933–1939; A Study in Public Opinion. *California.*

Andrew Gyorgy; A.B., Budapest, 1938; J. D., *ibid.*, 1939; A.M., California, 1939. Geopolitics: the Totalitarian Science. *U. C. L. A.*

Helen V. Hammarberg; A.B., California, 1936; A.M., Columbia, 1938. The Theory of an American Legal and Political System. *California.*

Martin Joseph Hillenbrand; A.B., Dayton, 1937; A.M., Columbia, 1938. An Analysis of the Concept of Obligation. *Columbia.*

**Byron Marshall Holmes;* A.B., U. C. L. A., 1934; A.M., California, 1939. Political Nativism. *Southern California.*

John Bockover Johnson; A.B., Williams, 1934. A Physical Science Approach to the Problem of Text-Writing in the Social Sciences. *Chicago.*

Edgar Kemler; A.B., Johns Hopkins, 1936. The Deflation of American Ideals: A Study of the Response of Traditional Progressivism to the Conditions of the Fascist Era. *Harvard.*

Mary Helena Kirsten; A.B., Wisconsin, 1935. The Political Columnists. *Chicago.*

Eugene E. Koch; A.B., Pittsburgh, 1932; A.M., *ibid.*, 1935. Political Philosophy of John Selden. *Pittsburgh.*

Bernard Kronick; A.B., California, 1937. Recent American Conservative Thought, 1920–1942. *California.*

Thomas B. Larson; A.B., Nebraska, 1937; A.M., Chicago, 1938. A History of Ideas Concerning Legislatures and Representation. *Columbia.*

Luther J. Lee, Jr.; A.B., Pomona, 1933. Political Significance of Reconstruction for American Nationalism after the Civil War; A Study in American Political Thought. *California.*

Herbert McClosky; A.B., University of Newark, 1940. The Will of the Minority. *Minnesota.*

Milton R. Merrill; B.S., Utah State College, 1925; A.M., Columbia, 1932. The Public Career of Reed Smoot. *Columbia.*

Raymond B. Nixon; Ph.B., Emory University, 1925; A.M., Wisconsin, 1934. Henry Woodfin Grady: "Journalistic Leader in Public Affairs." *Minnesota.*

Louis T. Olom; A.B., Chicago, 1937. The Study of Political Leadership. *Chicago.*

William Broderick Pendergast; A.B., Notre Dame, 1937; A.M., *ibid.*, 1938; 1$^{\text{ière}}$ Licence en Sciences Politiques et Sociales, Louvain (Belgium), 1939. American Ideas on the Limits of the Authority of Government. *Chicago.*

David Spitz; B.S.S., C. C. N. Y., 1937; A.M., Columbia, 1939. Ideas in Transition; A Comparative Study of the Impact of Totalitarianism and War upon a Selected Group of Political Thinkers. *Columbia.*

James Benjamin Stalvey; A.B., Duke, 1930; A.M., *ibid.*, 1931. The Political Philosophy of Daniel DeLeon: A Study in Early American Socialism. *Illinois.*

Robert L. Stern; A.B., New York State College for Teachers, 1935. Study of Predictions of Newspaper Columnists in the Newspapers of 1934. *Syracuse.*

Johan C. TeVelde; A.B., Calvin, 1934; A.M. Iowa, 1935. The Political Science of John Dewey. *Chicago.*

M. Henry Wells; A.B., Illinois, 1937; A.M., Louisiana State, 1939. Recent American Critics of Democracy. *Yale.*

John Higgins Williams; A.B., Washington and Lee, 1924; A.M., *ibid.*, 1928. The Rise and Decline of the Compact Theory in the United States. *North Carolina.*

GOVERNMENT AND POLITICS OF THE UNITED STATES AND ITS DEPENDENCIES

Paul H. Anderson; A.B. Notre Dame, 1938; A.M., *ibid.*, 1939. The Attitude of the American Leftists toward the Russian Revolution and the Bolshevik Government from 1917 to 1923. *Notre Dame.*

Totton James Anderson; A.B., California, 1930; A.M., *ibid.*, 1931. The Presidential Speech as an Instrument of Foreign Policy. *Southern California.*

Benjamin Baker; B.S., C. C. N. Y., 1935; A.M., Columbia, 1940. The Packers and Stockyards Act. *Columbia.*

Hillman M. Bishop; A.B., Columbia, 1926. Rhode Island and the Federal Constitution. *Columbia.*

Helen R. Brooks; A.B., Radcliffe, 1934; Ed.M., Harvard, 1936. The Apportionment Rule of the United States Civil Service. *Radcliffe.*

William D. Carey; A.B., Columbia, 1940; A.M., *ibid.*, 1941. A Study in War-time Federalism. *Columbia.*

Lawrence H. Chamberlain; B.S., Idaho, 1930; A.M., *ibid.*, 1932. Sources of Recent Major Legislation. *Columbia.*

Asher N. Christensen; A.B., Minnesota, 1924. A Study of the Legislative Settlement of Contested Election Cases. *Minnesota.*

Robert Lewis Clark; A.B., Lincoln, 1937; A.M., Illinois, 1938. An Examination of Congressional Draft Legislation—With Special Reference to the 1940 Selective Service Act. *Illinois.*

Wesley C. Clark; A.B., Marietta, 1930; A.M., Pennsylvania, 1938. The Effects of Economic Changes on a President's Popularity. *Pennsylvania.*

Bernice Dietz; A.B., Washington, 1930; A.M., *ibid.*, 1937. The Foreign Policy of Robert Lansing. *Washington (Seattle).*

Marvin Downey; A.B., Virginia, 1931; A.M., *ibid.*, 1934. The Committee on Rules of the United States House of Representatives. *Chicago.*

David Gregg Farrelly; B.S., Springfield College, 1937; A.M., Pittsburgh, 1940. The Senate Judiciary Committee. *Princeton.*

LeRoy Craig Ferguson; A.B., Miami, 1937; A.M., Ohio State, 1939. The Quakers in American Politics. *Ohio State.*

Pierre Ghent; B.E., Johns Hopkins, 1923. National Resources Programs and Distressed Communities. *American.*

Hilton P. Goss; A.B., Harvard, 1926. The Presidential Campaign of 1912. *California.*

Thomas J. Graves; A.B., University of Newark, 1937; A.M., University of New York, 1939. Federal-State Coöperation in World War II. *Princeton.*

Morton M. Grodzins; A.B., Louisville, 1940; A.M., *ibid.*, 1941. Japanese Evacuation on the West Coast: A Study of Pressure Group Activity, Intergovernmental Organization, and Constitutional Problems. *California.*

Wayne Clayton Grover; A.B., Utah, 1935; A.M., American, 1937. Some Aspects of the Civil Governance of American Military Forces, with Special Reference to the Army. *American.*

John D. Hall; A.B., Union, 1936; A.M., Syracuse, 1938. The Administration of U. S. Territories and Island Possessions. *Syracuse.*

Rufus G. Hall, Jr.; A.B., Texas, 1933; A.M., *ibid.*, 1935. American Imperialism in the Caribbean during the Taft-Knox Administration. *Harvard.*

Earl T. Hanson; Ed.B., Southern Illinois State Teachers College, 1933; A.M., Illinois, 1937. Special Groups in Congress. *Illinois.*

Wiley Edward Hodges; B.S., Roanoke, 1926; A.M., Duke, 1930. The Trend of Laissez-faire in Virginia from the Colonial Period to 1832. *Duke.*

Byron Marshall Holmes; A.B., U. C. L. A., 1934; A.M., California, 1939. Political Nativism. *Southern California.*

Sam. M. Houston; A.B., Iowa State Teachers College, 1925; A.M. Iowa, 1930, T.V.A.: A Study in Policy Formation. *Iowa.*

Howard K. Hyde; A.B., Fletcher, 1934; A.M. Chicago, 1935. The American Telephone and Telegraph Company; A Study in Large-Scale Organization. *Chicago.*

Thomas P. Jenkins; A.B., Lawrence College, 1937; A.M., Michigan, 1939. Organized Groups and Governmental Positivism in the United States since 1929. *Michigan.*

Alexander F. Kiefer; A.B., Columbia, 1937; A.M., *ibid.*, 1938. Financial and Trade Measures as Implements in American Foreign Policy. *Columbia.*

Merle Kling; A.B., Washington, 1940; A.M., *ibid.*, 1941. Missouri's Attitude on Foreign Policies as Expressed by her Congressmen. *Washington (St. Louis).*

Jack Franklin Leach; A.B., California, 1937. The Law, Theory, and Practical Politics of National Conscription in the United States, with Comparisons Drawn from National Experience with Conscription Elsewhere. *California.*

Jerome Machlin; B.S.S., C. C. N. Y., 1935. A Study in Protest Politics. *Syracuse.*

Edwin M. Martin; A.B., Northwestern, 1929. Influence of Organized Economic Groups on Federal Tax and Tariff Legislation from 1921 to 1933. *Northwestern.*

F. Graham Matheson; B.S., Princeton, 1939; A.M., Pennsylvania, 1938. Political Geography of Puerto Rico. *Clark.*

Willard C. Matthias; A.B., Iowa, 1936; A.M., Minnesota, 1938. The Formation of Labor Policy under the New Deal. *Harvard.*

Sister M. Annunciata Merrick, R.S.M.; A.B., Catholic University, 1920; A.M., Notre Dame, 1925. Theodore Roosevelt and Practical Democracy, with Particular Reference to the Anthracite Coal Strike of 1902. *Notre Dame.*

Walden Moore; A.B., Harvard, 1922. The American Navy Bill of 1916. *Columbia.*

Paul D. Mulkey; B.Ed., Southern Illinois Normal, 1935; A.M., Illinois, 1936. Congressional Investigation of Subversive Activities. *Illinois.*

Bro. August Raymond Ogden, F.S.C.; A.B., Manhattan, 1935; A.M., St. Mary's University (San Antonio, Tex.), 1939. Special House Committee for the Investigation of Un-American Activities. *Catholic University.*

Charles G. Padelford; A.B., Washington, 1937. The Foreign Policy of Secretary Stimson. *Washington (Seattle).*

Wallace J. Parks; A.B., Williams, 1932; LL.B., George Washington, 1937. Federal Import Control. *Columbia.*

A. Edward Patmos; A.B., N. Y. U., 1935; A.M., *ibid.*, 1936. Some Recent Attempts of Non-Political Organizations to Influence Federal Legislation. *New York University.*

Margaret Rush.; Richard Rush: a Biography. *Bryn Mawr.*

William Schuhle, Jr.; A.B., Washington and Lee, 1935; A.M., 1936. Social Security as a Responsibility of Government. *Johns Hopkins.*

Ralph Scott; A.B., Williams, 1923; LL.B., Howard, 1926; A.M., Catholic University, 1939. Groups Representing Negro Interests in the National Field. *Catholic University.*

Robert H. Skilton; A.B., Pennsylvania, 1930; A.M., *ibid.*, 1931; LL.B., *ibid.*, 1934. Governmental Aid to Mortgage Debtors, 1929–1939. *Pennsylvania.*

L. William Steck; A.B., Otterbein, 1937; A.M., Ohio State, 1938. The Formation of the Jeffersonian Republican Party. *Ohio State.*

Liba Harold Studley; B.S., C. C. N. Y., 1921; LL.B., Fordham, 1925; A.M., Columbia, 1929. Progress of Aviation Legislation in the United States. *Columbia.*

Ned Weissberg; A.B., Cornell, 1939. The Federal Child Labor Amendment: A Study of Pressure Politics. *Cornell.*

Norman Wengert; A.B., Wisconsin, 1938; A.M., Fletcher, 1939. The Trucking Industry and Public Policy. *Wisconsin.*

CONSTITUTIONAL AND ADMINISTRATIVE LAW IN THE UNITED STATES

Ernest F. Acheson; A.B., Washington and Jefferson, 1934; A..M, *ibid.*, 1935. The National Labor Relations Act: A Study in Law and Administration. *Johns Hopkins.*

Paul Beckett; A.B., Monmouth College, 1935; A.M., Illinois, 1938. Judicial Review of Legislative Acts in California since 1879. *U. C. L. A.*

Ross C. Beiler; A.B., Allegheny College, 1937; A.M., Iowa, 1940. The Commerce Clause and State Regulation, 1888–1910. *Iowa.*

Harold Christensen; A.B., Iowa, 1939; A.M., *ibid.*, 1940. The Concept of Liberty as Enunciated by the Supreme Court from 1937–1942. *Iowa.*

Robert Burns Dishman; A.B., Missouri, 1939; A.M., *ibid.*, 1940. American Legal Commentators and the Constitution. *Princeton.*

Richard H. Ernst; A.B., Minnesota, 1933; A.M., Princeton, 1935; LL.B., Yale, 1938. The Administrative Adjudicative Technique as Used by the National Labor Relations Board. *Princeton.*

Delavan P. Evans; A.B., Occidental, 1933. The Use of the Concept of Inherent Powers by the Supreme Court of the United States. *California.*

Spencer R. Gervin; B.S., State Teachers College, Johnson City, Tennessee, 1936; A.M., Duke, 1941. The Concept of Full Faith and Credit for Divorce. *Duke.*

J. Clare Heinlein; A.B., Grinnell College, 1934; LL.B., Kansas City School of Law, 1938. The Institution of the Administrative Court. *Chicago.*

Francis H. Heller; J.U.C., Vienna; LL.B., Virginia, 1941. The Supreme Court and Treaties. *Virginia.*

Samuel Hendel; LL.B., Brooklyn Law School, 1930; B.S.S., C. C. N. Y., 1936. Constitutional Doctrine of Charles Evans Hughes. *Columbia.*

Robert Baker Highsaw; A.B., Princeton, 1939; A.M., Harvard, 1942. Mr. Justice White: A Judicial Biography. *Harvard.*

Louis W. Koenig; A.B., Bard, 1938; A.M., Columbia, 1940. Emergency Powers of the President. *Columbia.*

Samuel J. Konefsky; A.B., Brooklyn, 1937; A.M., Columbia, 1938. Mr. Justice Stone and the Theory of Judicial Review. *Columbia.*

William L. LaRue; A.B., Northwestern, 1933. Patents and Copyrights in American Public Law. *Princeton.*

George Lipsky; A.B., Washington (Seattle), 1938. Constitutional Powers of States Affecting Insterstate Commerce. *California.*

Rebecca Matthews McBride; A.B., Maine, 1930; A.M., American, 1932. Influence of the Supreme Court on State Legislation. *American.*

Vera McLaren; A.B., Southern California, 1924; A.M., Northwestern, 1929. The Doctrine of Public Interest. *Northwestern.*

Joseph McLean; A.B., Lafayette, 1937. Mr. Justice Day. *New York University.*

John Marshall Martin, Jr.; A.B., Tennessee, 1939. The United States Court of Customs and Patent Appeals. *Johns Hopkins.*

Maurice Meredith; A.B., Illinois, 1936; A.M., *ibid.*, 1938. Recent Developments in the Public Law of National-Local Relations. *Minnesota.*

Roy Miller; A.B., Hamline, 1927; A.M., Minnesota, 1928. Municipal Civil Service Law in Minnesota. *Minnesota.*

Donald D. Morgan; A.B., Cornell, 1933; Ed. M., Harvard, 1938; A.M., *ibid.*, 1939. The Constitutional Thought of Justice William Johnson. *Harvard.*

Frederic D. Ogden; A.B., Tusculum, 1938. Governmental Regulation of Foods, Drugs, and Cosmetics. *Johns Hopkins.*

Leo C. Reithmayer; A.B., Texas Technological College, 1934; A.M., *ibid.*, 1936. The Development of the Texas Constitution by Means of Formal Amendment. *Iowa.*

Theodore H. Skinner; A.B., Hamilton, 1919; A.M., Columbia, 1929. The Relation of Administrative Discretion in the United States to Constitutional Rights. *New York University.*

Owen Scott Stratton; A.B., Reed, 1938. State Taxation and the Commerce Clause. *Stanford.*

William O. Trapp; A.B., Indiana, 1912; A.M., Cornell, 1941. The Constitutional Doctrines of Justice Owen J. Roberts. *Cornell.*

Albert L. Turner; A.B., Western Reserve, 1923; LL.B., *ibid.*, 1927; A.M., Michigan, 1933. The Attorney-General as Legal Adviser to the Executive. *Michigan.*

Harry O. Wilson; A.B., Harvard, 1931; A.M., *ibid.*, 1932. The Trial Examiner in the National Labor Relations Board: A Study of Quasi-Judicial Development in an Administrative Body. *Northwestern.*

AMERICAN STATE AND LOCAL GOVERNMENT AND POLITICS

Bernard L. Barnard; A.B., Kansas, 1928; A.M., *ibid.*, 1932. Bicameralism in Kansas. *American.*

F. J. Barnes, II; A.B., William and Mary, 1927; A.M., *ibid.*, 1927. The City in Virginia. *North Carolina.*

Harald Bergerson; A.B., Puget Sound, 1931. Public Employee Relations in Seattle. *Chicago.*

Walter Thompson Bogart; A.B., U. C. L. A., 1930; A.M., Stanford, 1931. Glebes as a Factor in the Public Revenues of Vermont. *Stanford.*

Eugene C. Brownson; A.B. Washington, 1938; A.M. *ibid.*, 1940. The Administration of County Functions in the City of St. Louis. *Washington* (*St. Louis*).

Clyde C. Carter; A.B., Emory and Henry, 1925; A.M., Vanderbilt, 1928. The Inferior Courts of North Carolina Created by Legislative Enactment. *North Carolina.*

Donald A. Crawford; A.B., Stanford, 1937. Administration of Labor Legislation in California. *Stanford.*

Frederick William Dumschott; A.B., Washington College, 1927; A.M., Virginia, 1931. State Administrative Control of Cities in Maryland. *American.*

John Paul Duncan; A.B., Butler, 1932; A.M., Indiana, 1938. Government and Administration in the City of Indianapolis. *Indiana.*

J. Kirk Eads; A.B., Columbia, 1936; A.M., *ibid.*, 1937. Theory and Practice of State Control over the Local Unit. *Indiana.*

Samuel J. Eldersveld; A.B., Calvin College, 1938; A.M., Michigan, 1939. A Study of Urban Electoral Trends in the State of Michigan, 1930–1940. *Michigan.*

Emery Fast; A.B., Colorado, 1927; A.M., *ibid.*, 1929. A History of the California Criminal Syndicalism Law. *Stanford.*

Robert L. Fisher; A.B., Stanford, 1931; A.M., *ibid.*, 1933. The American Labor Party of New York State, 1936–1942. *Columbia.*

Mona Fletcher, B.S. in Ed., Kent State University, 1921; A.M., Chicago, 1924. Bicameralism in Ohio. *Ohio State.*

Neil F. Garvey; B.S., Illinois, 1924; M.S., *ibid.*, 1938. Some Financial Problems Arising in Case of Changes in School District Boundaries through Consolidation, Annexation, or Abolition. *Illinois.*

Lynwood M. Holland; A.B., Emory, 1932; A.M., *ibid.*, 1933. The Direct Primary in Georgia. *Illinois.*

Melvin C. Hughes; A.B., Georgia, 1933; A.M., *ibid.*, 1935. County Government in Georgia. *North Carolina.*

Laulette L. Irvin; A.B., Goucher, 1935; A.M., Columbia, 1935. The Suffrage Movement in Illinois. *Chicago.*

Emil Frank Jarz; A.B., Chicago, 1938. Legal and Administrative Aspects of Intermunicipal Agreements in the United States. *Chicago.*

John Paul Jones; B.A.J., Florida, 1937; A.M., Wisconsin, 1939. History of the Republican Party in Illinois since 1912. *Illinois.*

Paul Kelso; A.B. in Ed., Ball State Teachers' College, 1933; A.M., Wisconsin, 1938. Selected Chicago Civic Groups. *Ohio State.*

Orville M. Knutson; A.B., California, 1931. Special Assessments in the Urban Areas of California. *California.*

James M. Leath; A.B., Austin, 1931; A.M., Southern Methodist, 1932. Delegated Legislation in North Carolina. *Duke.*

Bernhard O. J. Linnevold; A.B., Luther College, 1930; A.M., Colorado, 1931. Cheese and Politics. *Wisconsin.*

Carl A. McCandless; B.S. in Ed., Central Missouri State Teachers College, 1930; A.M., Missouri, 1932. Problems in State Personnel Administration, with Special Reference to the State of Iowa. *Iowa.*

Albert B. Martin; A.B., Muskingum, 1928; A.M., Pittsburgh, 1938. Financial Powers and Administration in Allegheny County. *Pittsburgh.*

Boyd Archer Martin; A.B., Idaho, 1936; A.M., Stanford, 1937. The Direct Primary in Idaho. *Stanford.*

Molly Milman; A.B., Hunter, 1935; A.M., Columbia, 1938. The Fusion Movement in New York City. *Columbia.*

Malcolm Charles Moos; A.B., Minnesota, 1937; A.M., *ibid.*, 1938. Penal Administration in Alabama. *U. C. L. A.*

William F. Nowlin; A.B., Howard, 1919; A.M., Ohio State, 1930. Legislative Investigating Committees in Ohio, 1919–1934. *Ohio State.*

James Kimbrough Owen; A.B., Louisiana State, 1937. Local Government in Louisiana. *Princeton.*

Ira Polley; A.B., Indiana, 1938. The Politics and Administration of State Labor Relations Acts. *Minnesota.*

Clifford Rader; A.B., Eastern State Teachers College (Kentucky), 1934; A.M., Kentucky, 1937. Problems of Kentucky County Government. *Kentucky.*

Glenn W. Rainey; A.B., Emory 1928; A.M., *ibid.,* 1929. The Negro in Georgia Politics since Reconstruction. *Northwestern.*

Maurice M. Ramsey; A.B., Wayne, 1928; A.M., *ibid.,* 1933. Non-Partisan Government in Detroit, 1918–1941. *Michigan.*

Miriam Roher; A.B., Barnard, 1936; A.M., Northwestern, 1937. Public Relations Reporting by City Governments; Nature and Effectiveness. *California.*

Geddes William Rutherford; A.B., Missouri, 1913; A.M., Harvard, 1916. Metropolitan Problems of the District of Columbia. *American.*

George Snowden; A.B., West Virginia State College, 1932; A.M., N. Y. U., 1935. Political Participation of Negroes in Border States. *Indiana.*

Thomas Noel Stern. A.B., Swarthmore, 1934; A.M., Pennsylvania, 1940. Community Forest in Pennsylvania. *Pennsylvania.*

Israel Stiefel; A.B., Pennsylvania, 1925; LL.B., *ibid.,* 1928; A.M., *ibid.,* 1932. Industrial Changes and Taxation Problems in Pennsylvania. *Pennsylvania.*

Harvey R. Teel; B.Ed. Southern Illinois Normal, 1932; A.M., Illinois, 1933. County Boards in Illinois. *Illinois.*

Kuo Ying Tsai; A.B., Yenching University, Peiping, China, 1935; A.M., Princeton, 1937. Alcoholic Beverage Regulation in New Jersey. *Princeton.*

Max Wesley Turner; B.Ed., Eastern Illinois State Teachers College, 1940; A.M., Iowa, 1941; State Regulation of the Motion Picture Industry. *Iowa.*

John Robert Verby; B.S.Ed., Northeast Missouri State Teachers College, 1928; A.M., Missouri, 1932. Legislative History of the Administrative County Offices in Missouri. *Washington (St. Louis).*

Harold Wesley Ward; A.M., Louisiana State. The Virginia Alcoholic Beverage Control Board. *Virginia.*

Ellsworth E. Weaver; B.S., Utah, 1937; M.S., *ibid.,* 1938. State Supervision of Municipal Administration in Utah Cities of the First and Second Classes. *New York University.*

Lawrence H. Wendrich; A.B., Newark, 1937; A.M., N. Y. U. 1939. Citizen Organization and Action in Selected Areas. *Indiana.*

Julian R. Wilheim; A.B., Columbia, 1929; A.M., N. Y. U., 1938; LL.B., Columbia, 1938. The Cost of the Administration of the Courts of the City of New York. *Columbia.*

George Willoughby; A.B., Iowa, 1937; A.M., *ibid.,* 1939. The Iowa State Department of Agriculture. *Iowa.*

Baskin Wright; A.B., Alabama, 1924; A.M., Wisconsin, 1929. The Impeachment of Governors in the United States. *Duke.*

Robert Martin Young; A.B., Washington, 1930; A.M., *ibid.,* 1932. The Office of Governor in Missouri. *Washington* (St. Louis).

Frederick L. Zimmermann; A.B. Columbia, 1928; A.M. *ibid.,* 1929. The Council of State Governments. *Columbia.*

PUBLIC ADMINISTRATION IN THE UNITED STATES

Clark D. Ahlberg; A.B., Wichita, 1939. Tax Administration Processes in the New York State Government. *Syracuse.*

Robert W. Anderson; A.B., Cornell, 1935; A.M., *ibid.,* 1938. Intergovernmental Relationships in Federal Relief Administration. *Princeton.*

Arthur D. Angel; A.B., Stanford, 1930; A.M., *ibid.,* 1931. The Central Valley Project of California: Political and Administrative Aspects. *U. C. L. A.*.

Arthur L. Bach; B.Ed., Minnesota State Teachers College, 1931; A.M., North Dakota, 1937. Administration of Indian Resources in the United States, 1933–1941. *Iowa.*

Jesse H. Bankston; A.B., Louisiana State, 1933; A.M., *ibid.*, 1936. The Administration of the Fair Labor Standards Act. *North Carolina.*

Dana Mills Barbour; A.B., Washington, 1929; A.M., *ibid.*, 1930. The Recent Growth of the President's Administrative Power through Financial Control. *Stanford.*

Russell William Barthell; A.B., Washington, 1930; A.M., *ibid.*, 1931. Recruiting the Public Service. *Chicago.*

Kenneth Charles Beede; A.B., George Washington, 1927; M.B.A., Harvard, 1929. Urban Housing: Quantitative Measures of Demand and Supply in Local Housing Markets. *American.*

Frank P. Bourgin; A.B., Minnesota, 1930; A.M., Claremont, 1932. History of Regional Planning in the United States. *Chicago.*

Vincent J. Browne; A.B., Howard, 1938. The Budget as an Instrumentality of Democratic Control. *Harvard.*

Frederic Bundy; A.B. and B.S. in Ed. Kent State University, Ohio, 1935; A.M., Ohio State, 1938. Fact Finding Processes in the Department of Agriculture. *Syracuse.*

Lynton K. Caldwell; Ph.B., Chicago, 1934; A.M., Harvard, 1938. Contributions of Jefferson and Hamilton to Administrative Thought. *Chicago.*

Howard A. Calkins; A.B., Ohio Wesleyan, 1927; A.M., Wisconsin, 1928. A Survey of Personnel Practices in Selected Texas Administrative Agencies. *Wisconsin.*

Sophie T. Cambria; A.B., Barnard, 1937; A.M., Bryn Mawr, 1938. The Placement of Young Workers by the Junior Employment Service in Philadelphia; A Study of Vocational Adjustment of Youth. *Bryn Mawr.*

Jean Ferguson Charters; A.B., Wisconsin, 1935; A.M., Columbia, 1936. State Merit System Councils. *Chicago.*

Dale D. Clark; A.B., Utah, 1935, A.M., Columbia, 1937. Group Participation in Administration. *Harvard.*

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BOOK REVIEWS AND NOTICES

The Crisis of Our Age. By PITIRIM SOROKIN. (New York: E. P. Dutton and Company. 1941. Pp. 338. $3.50.)

Pitirim Sorokin presents here in snappier and more palatable form the argument of his four-volume work, *Social and Cultural Dynamics.* He gives us his philosophy of history, analyzes the present world crisis in terms of it, and prescribes the way in which the crisis can be met.

His theory of history is a cyclical one, with three main cultural forms —"sensate," "ideational," and "idealistic"—succeeding each other after a rough fashion. In the first, the highest reality is sensory. In the second, it lies in the super-sensory and super-rational. In the third, the super-sensory and the super-rational combine with the "noblest" elements of the rational and sensory to blend into "one unity, that of the infinite manifold, God." The succession of cultural forms is in a dialectical pattern. The sensate culture breeds its opposite, the ideational, and the idealistic synthesizes the best elements of each. There is no definite time span for the life history of a culture. It starts to die when it ceases to be creative. Its death is accompanied by crises, war, revolution, and chaos during which the new culture or cultural phase struggles to be born.

Sorokin's philosophy of history serves as the instrument for an extensive analysis of the aspects of our own present sensate culture—our arts, philosophy, religion, institutions. He sees the present crisis as the death agony of a sensate culture which has run its course and is due to be succeeded by an ideational or idealistic phase. Capitalism or socialism, democracy or totalitarianism, do not from Sorokin's point of view represent real choices. They are the surface symptoms of cultural disintegration.

What shall we say about this scheme? In the first place, it is open to the objection that applies to all schematizers. Charles A. Beard has pointed out about Spengler that "millions of scattered fragments can be forced into the Spenglerian picture, but millions of other fragments can be forced into an equally contradictory hypothesis by a mind equally powerful." Despite Sorokin's phony detachment from the problems of today, it is hard not to take so intricate a system seriously. All the paraphernalia of scientism—the charts and tables showing the relative amounts of sensate and super-sensate art and philosophy in a given culture—have a certain soporific effect on the intellect.

And yet there is a basic evasiveness in the whole volume—an evasiveness as to the ends of social effort. The purpose of understanding history and society is clearly to control and order both. Yet the only rôle that Sorokin assigns to us is that of prolonging or shortening, by our resistance or by our acceptance, the length of a cultural phase. Beyond this, no attempt to shape the future can be successful. The victory or defeat of the fascist forces in our era is of only trivial relevance, since neither victory nor defeat will arrest or prevent the disintegration of our sensate culture. Our best policy is presumably to relax, to accept the inevitable, to do what we can to hasten the change and shorten the period of conflict. The blurb describes the book as "a challenge to the wave of pessimism" that has swept the world today. So far as I can see, the challenge consists in a promise that no matter what the trials of our age, plant and animal life will not perish from this earth.

Sorokin seems to belong in the tradition of Machiavelli, Vico, Spengler, and Toynbee. Yet for all the massive volume of his work, he must be rated as one of the *epigoni* in that tradition. In his passion for schematizing, he has lost track of social complexities. The actual moral values of our time manage to slip through the crevices of his ethical grandeur and get lost. He tells us that the minor strains of our sensate society—its secondary idealistic and ideational activities which have not been integrated in the dominant pattern of our dying society—will survive us. This is either an unbased faith or a far-reaching evasion. Actually a violent disruption of a society as complex as ours may destroy not only the cultural values associated with a sensate culture, but the more abiding values as well upon which a future society would have to build. I am reminded of the Low cartoon, showing a sinking row-boat with one man bailing busily in the stern while two others, very aloof, look on from the bow. Even granted Sorokin's single-plane classification of cultures, over-formal and over-moralistic as it is, there are still immense differences between various types of a sensate culture. This is a fallacy of the categories into which both the mechanical logicians and the mechanical moralists tend to fall. In speaking of the aridity of those who concern themselves with the forms of life rather than its substance, Mr. Justice Holmes once said that no amount of cogitation over a pot will ever give you the beer. A man whose analysis of cultural forms is too blunt to find any appreciable differences between the humanism of democracy and the barbarism of the fascists is not a prophet for me.

MAX LERNER.

Williams College.

What Democracy Meant to the Greeks. BY WALTER R. AGARD. (Chapel Hill, N. C.: University of North Carolina Press. 1942. Pp. xii, 278. $3.00.)

The purpose and subject-matter of this book are not at all what a reader might expect from its title. The Greek equivalent of the word "democracy" was continuously in use by Greek authors who had occasion to write about politics. Among these Greek authors, the philosophers at least tried to use terms of this sort in fairly exact senses. They tried to discover a meaning for democracy and like terms which would be in accord with Greek practice. Aristotle, in particular, distinguished many varieties of democracy, as he did also of monarchy and oligarchy, and he showed how those variations in political institutions were related to differences of social and economic conditions and also how the deliberative, executive, and judicial organs of the city-states were modified to make them conform more or less to the democratic type. All this might naturally be taken as included in "what democracy meant to the Greeks." In fact, however, Mr. Agard scarcely touches upon the precise usage of the Greek word "democracy." He is more concerned with the connotations of our present English word, and this present usage is not in fact very old, even in English. It would have surprised and confused most signers of our Declaration of Independence if they had been told that any government which respects the essential human rights of its subjects and allows free discussion is a democracy.

Mr. Agard's subject is really the human values which we now associate with the word democracy and the extent to which these values were sought and realized in the Greek city-state, and more particularly in Athens in the Age of Pericles. In general, his book covers about the same ground as A. E. Zimmern's *Greek Commonwealth*, but with less attention to the description and the history of Athenian political institutions. He is concerned, that is to say, more exclusively with ideals and values. He attempts, however, to measure the success and the failure of the Athenians in realizing their ideals, and he has chapters on the criticism of Athenian democracy by the Old Oligarch, by Aristophanes, and by Plato and Aristotle. As is practically inevitable, the texts for his account of Athenian ideals are drawn from the Funeral Oration which Thucydides attributes to Pericles in the second book of his *History*. In addition, however, he covers in the course of the book a wide range of Greek drama and art and poetry. The best quality of the book grows from the author's deep and sympathetic enthusiasm for the ideals of Greek humanism which, as everybody would agree, have formed the permanent foundation of European culture.

Nevertheless, it is possible to doubt whether these values were as intimately related to Athenian democracy as Mr. Agard supposes. When he credits Athenian government with "creating within the city a culture of the first order" (p. 75), it is hard to avoid the suspicion that no government can really do so much. After all, there was great art and great intellectual achievement in other Greek cities and not always in democracies, and though Athenian achievement was preëminent, it need not have been due wholly to Athenian government. Moreover, it is almost inevitable that Mr. Agard's mode of presentation, which separates the achievements of the democracy from its criticism, produces a more roseate picture of Athenian government than the facts warrant. It may be true that the modern world might learn most of the ideals of political freedom from the Greeks, but unfortunately it could learn most of the methods of political corruption in the same school. There is surely a measure of euphemism in saying that Pericles' program of public works "put the money of the city at the service of the people who needed it most" (p. 65)—the money being in fact mostly the property of the League—just as it is a little euphemistic to say that Pericles "married" Aspasia.

In fairness, it should be said that Mr. Agard seriously intends to present the bad as well as the good. In sum, his indictment of the deficiencies of Greek democracy is pretty formidable. It never included women or foreigners or slaves. It endured hardly a century. Athenian imperialism was both cynical and short-sighted in the oppression of its allies and subject-states. It never succeeded in including enough of the Greek world to bring security against either the internecine wars between the city-states or against outside aggression. All this is said, but somehow the criticism never actually confronts the glorification of the democracy.

In one major respect, however, I believe that Mr. Agard's account of political ideals is historically unsound. The ideal of political equality in any inclusive sense was not, I think, included among the ideals of the city-state; it was the creation, not of the classical, but of the Hellenistic age. It seems to me to be profoundly misleading to say that to the Athenians the word "barbarians" "meant little more than foreigners" (p. 155), especially when the word was used with a political connotation. Aristotle certainly believed that barbarians are "slaves by nature" and that despotic government is wholly suitable for them. Without the technical terminology, Herodotus seems to me to feel exactly the same way about them, and this is in no way mitigated by his interest in their curious customs. A. J. Carlyle was surely right when he pointed out that there is a whole world of difference between the ideals of the city-state and the assertion of human equality in Cicero's *Laws*. And W. W. Tarn was equally right when he suggested that Alexander's ideal of *homonoia* opened a new phase both of individualism and internationalism. The view that sees in Stoicism only a "noble escapism" (p. 250) is a typical case of the classicist's fallacy—the illusion that important ideas occur only in an inspiring literary form.

George H. Sabine.

Cornell University.

Sociology of Law. By Georges Gurvitch. (New York: Philosophical Library and Alliance Book Corporation. 1942. Pp. xx, 309. $3.75.)

In the present century, many developments in the social sciences have tended to break down the compartmental barriers which did so much to keep them apart during the nineteenth century. In the field of sociology, this development has given rise to an attempt to effect a better understanding of what we call "law," and of what lies behind the phenomena of the legal order as these phenomena appear to the legalist. In Europe, as Dean Roscoe Pound points out in his valuable preface, this movement has brought forth a branch of sociology calling itself sociology of law. In this country, it has produced a sociological jurisprudence which has done much to reshape the methods and purposes of our legal system in recent years. Here the emphasis has been upon jurisprudence, as a special science of law, with reference to the adjustment of relations and ordering of conduct involved in group life. In Europe, the emphasis has been on sociology as a general science of society with reference to the phenomena of group life as it involves law. The author of this book has been concerned with this latter aspect of the problem for over twenty years. While serving as professor of sociology and ethics at the University of Strasbourg (France), he organized the International Institute of Philosophy and Sociology of Law (Paris) and founded and became editor-in-chief of the *Review of Sociology of Law,* the pioneer journal in this field. He is now in this country, where his activities will undoubtedly stimulate more extensive interest in this area. In the present book he attempts a comprehensive survey of the work already done in Europe and America in the sociology of law, and an outline of the work remaining to be done.

Defining the sociology of law as "that part of the sociology of the human spirit which studies the full social reality of law, beginning with its tangible and externally observable expressions, in effective collective behaviors (crystallized organizations, customary practices, and traditions or behavioral innovations) and in the material basis (the spatial structure and demographic density of jural institutions)," he states that "the sociology of law interprets these behaviors and material manifestations of law according to the internal meanings which, while inspiring and penetrating them, are at the same time in part transformed by them." Moving directly from "jural symbolic patterns fixed in advance, such as organized law, procedures, and sanctions, to jural symbols proper, such as flexible rules and spontaneous law, "it proceeds," he says, "to jural values and ideas which they express, and finally to the collective beliefs and institutions which aspire to these values and grasp these ideas, and which manifest themselves in spontaneous (normative facts) sources of the validity, that is to say, of the positivity of all law." A jurisprudence, or "dogma of the positive law," he asserts, can only establish a "coherent system of normative patterns and symbols . . . valid for the experience of a particular group at a particular period." But legal sociology envisages "the quasi-infinite variety of experiences of all societies and all groups, describing the concrete contents of each type of experience (to the extent that they are expressed in phenomena externally observable), and revealing the full reality of law which patterns and symbols veil more than they express."

In the order set forth, Professor Gurvitch considers: (1) the object and problems of the sociology of law; (2) the forerunners and founders of the sociology of law; (3) systematic sociology of law, including what he calls the microsociology of law; (4) differential sociology of law, including the jural typology of particular groupings and the legal typology of all inclusive societies; (5) genetic sociology of law; and (6) sociology of law and philosophy of law. Any project such as this, which attempts to define the precise framework of a new discipline, including its objects, methods, and problems, necessarily requires not only a wide scholarship, but great skill in synthesis as well as analysis. Professor Gurvitch certainly demonstrates a wide familiarity with the work which has been done in Europe and America, in both sociology and jurisprudence, as he evaluates their relationship to the sociology of law. This effort, with its promise of more to come, should tend to stimulate the interest of American scholars in this previously neglected area. This is in itself a useful and enriching service, and suggests the benefits which will undoubtedly result from the presence of other able European scholars on our shores.

F. R. AUMANN.

Ohio State University.

The Growth of American Constitutional Law. BY BENJAMIN F. WRIGHT. (New York: Published for Reynal and Hitchcock by Houghton Mifflin Company. 1942. Pp. viii, 276. $2.25.)

This concise and important book should earn the gratitude of every student of American constitutional law and political theory. In 260 pages, it surveys the vast literature of the constitutional policy of the Supreme Court, really under great rubrics of political theory—popular government and the rule of law; the nature of authority, property, and liberty; the separation of powers; and federalism. No *summa theologica* of constitutional law, the discussion proceeds by historical periods. The effect of growth produced is powerfully cumulative, and recent controversies fall naturally into place in the grand drama of everlasting problems.

Professor Wright begins by pointing out that although the Constitution has been amended infrequently, it has lasted a long time. The "rational reconciliation of a fixed constitution with continuous growth and change has been one of the really essential elements in both the permanence and the flexibility of the Constitution. . . . Because the Supreme Court has been the final interpreter of the Constitution, that court has come to be a major symbol of stability and security." The story of the origin of judicial review, and of Marshall's predilection for property and national power, is well retold. It is contended that the change under Taney was not so great as is sometimes supposed, that the Dred Scott case was the first great failure of the Court to stop a national social reform, and that the Court in the Civil War failed substantially to influence events and to protect civil liberties.

Between 1865 and 1898, the "modern constitutional law" emerged, which lasted until 1937. While state powers were encouraged, the Court curbed interference with interstate commerce; while congressional control of commerce was allowed, statutes were construed narrowly against labor and in the interest of property; Congress was prevented from implementing the protection of civil liberties; and the immense project was completed of safeguarding property, but not civil liberties, through "substantive" due process of law. The twelve decisions of 1935–36 holding New Deal laws invalid were the climax of this constitutional policy; and the equally striking series of reversals beginning in 1937 with the discussion of court reforms marks out new constitutional policy for the future. Commerce is to mean "business" in a broad sense; Congress is to have the say about the "general welfare" under the spending clause; due process is to be more largely procedural and administrative as to property, and is to support powerfully the protection of civil rights; states may venture experiments previously forbidden; and intergovernmental enterprises of policy and administration will be encouraged.

"Undoubtedly judicial review was intended to be a conservative device, but it was intended to conserve the Constitution, not a particular economic philosophy," concludes the author. "The constitutional theory of Justice McReynolds has been changed in many ways, but the Constitution of James Madison is unimpaired. Indeed, the law of that Constitution is today in a healthier condition than it has been for half a century. . . . And once more the doctrines of the Court are in substantial accord with the main currents of national life." The reviewer cannot disagree with this telling of the story. He hopes that some day "constitutional law" in America will give due study to the great congressional and presidential constructions of the Constitution, instead of being occupied so completely with the so exquisitely organized documentation of the courts. Perhaps scholars may turn to this more readily, now that Professor Wright has so well summarized and clarified, with the tools of political theory, the mass of material new and old dealing with the judiciary's constitutional policy.

LLEWELLYN PFANKUCHEN.

University of Wisconsin.

Federal Coöperation with the States under the Commerce Clause. BY JOSEPH E. KALLENBACH (Ann Arbor: University of Michigan Press. 1942. Pp. viii, 428. $4.00.)

During recent years, there have been published a number of studies of the commerce power under the Constitution, with special reference to interjurisdictional relationships, by Corwin, Frankfurter, Gavit, Ribble, and others. Most of these have been limited in scope. Now comes an author attempting, in a volume of substantial size, a comprehensive survey of the whole field; and while he has properly made use of the earlier studies, the volume is by no means a mere summary and condensation of the work of others.

The organization and arrangement of the material in eleven chapters is logical and orderly. A discussion of the theory of exclusiveness of the commerce power is followed by a consideration of regulation by divestment, as illustrated by the Wilson Act, the judicial construction of which is discussed at some length. The confirmation of state power by the Wilson Act formula followed in such diverse fields as game birds and animals, oleomargarine and butter products, misbranded articles of gold and silver, and in plant quarantines. Later, the application of the Wilson Act formula was extended to cover prison-made goods and prize-fight films. The Webb-Kenyon Act is considered as an illustration of divestment by legislative prohibition, the Twenty-first Amendment by constitutional provision. Succeeding chapters deal with federal prohibitions of commerce for the protection of destination states (admission of Negroes, intoxicating liquors, prison-made goods); federal regulation of commerce for the protection of sending states (inspection of exports, game birds and animals, suppression of various types of crime, contraband oil, significance of regulation by conditional prohibition); and the federal adoption of state laws relating to commerce (quarantine and health laws, the slave trade, pilotage, workmen's compensation, and intoxicating liquors). The volume concludes with a brief summary and conclusions, a selected and classified bibliography, a table of cases, and an index, all of which seem adequate. All the leading cases are analyzed. The text itself is well documented, the printing and binding well and attractively done.

Students in this field will readily concur in the views of two eminent scholars quoted by the author in his preface. One concludes that the conflicting and contradictory doctrines found in the Supreme Court cases bearing on this part of the Constitution leave one in "utter confusion," while the other writes that "if all the opinions, monographs, treatises, and articles which have been written concerning the commerce clause of the Constitution were laid end to end, they would reach from confusion to futility." The author of this volume has done as much as one man can do to dispel this confusion.

In the limited space of a review, it is possible to select for comment only a few of the many points deserving consideration. In discussing the familiar background of the Wilson Act, the author considers the original-package doctrine and the silence-of-Congress doctrine as foundations of the divestment theory. In Leisy v. Hardin, the Court reaffirmed the original-package doctrine of Brown v. Maryland, leaving the states without power to control incoming shipments of liquor in interstate commerce. The answer of Congress to the decision was the Wilson Act—a measure warmly debated in the two houses, and later subjected to conflicting interpretations by the Court, although the constitutionality of the act was sustained in *In re* Rahrer. From this effort to uphold the state police powers by federal action, it was only a step to make violations of state police regulations a federal offense, but it took time. The Webb-Kenyon Act, approximately a quarter of a century later, brought this about. Fearing to rest their case on legislation, the dry extremists sought and secured the Eighteenth Amendment. When the sorry results of this policy became apparent, the Eighteenth Amendment gave way to the Twenty-first, which restored to the states the power to determine policy, still backing them up, however, with the promise of federal support in the enforcement of such policies as they might select. In this evolutionary process, the author concludes, "the importance of the Wilson Act cannot easily be overestimated. By it Congress made the first great breach in the wall of protection thrown up around interstate and foreign commerce" (p. 111).

The work is primarily a study in the field of federal-state relations, one of the main objectives in which is always to achieve uniformity. The tendency of the federal government to extend its powers on the one hand, and the desire of the states to preserve theirs on the other, creates an almost inevitable clash in point of view. A good deal has been written on the influence of federal administrative and legislative action upon state policies, but the author of this volume stresses a new and interesting point when he devotes a chapter to the federal adoption of state laws relating to commerce. This solution raises interesting constitutional questions of delegation of power by Congress to the states, and of the adoption by Congress of state laws and regulations as a part of the federal legal system. The numerous instances of the use of this device would seem to indicate the general acceptance of the latter theory. The possibility of raising important and relatively new questions of this character indicates how much work is still to be done in analyzing the kind of federalism we now have, and in planning the new federalism that is in process of development, to meet the needs of the days to come.

W. BROOKE GRAVES.

Temple University.

Administrative Regulation of Private Enterprise. EDITED BY JOHN P. HORLACHER. (Philadelphia: Annals of the American Academy of Political and Social Science, Vol. 221. May, 1942. Pp. viii, 256. $2.00.)

The twenty-three articles which comprise this study of administrative regulation are grouped under four general headings entitled "The Problem," "The Organizational Structure," "The Policy Function," and "The Adjudicative Process." With some exceptions, the emphasis throughout is on federal rather than state and local agencies.

The five articles in the first group deal with the development and extent of administrative regulation, the influence of parties and pressure groups on administrative agencies, and the transition from "regulatory" to "managerial" tasks in recent administrative control of private enterprise. Professor Charlesworth contends that political scientists have failed to modify their study of administration to take account of this transition; and it is perhaps fair to say that the volume as a whole bears out his contention. It is more concerned with the prevention of administrative abuses than with discovering more effective methods of management. This is not to say that the two problems are wholly unrelated. At any rate, this brief but provocative article will bear reading.

In the opinion of the reviewer, the group of articles dealing with organizational structure is by far the most satisfactory. Professor Gaus' discussion of the problem of integration reveals an intimate knowledge of the difficulties and a healthy skepticism of formal organizational remedies, and is rich in suggestions. Professor Pinney's presentation of the case for the independent regulatory agency is temperate and persuasive, and by no means denies the need for integration. The pragmatic tone of these discussions is maintained in the other articles of this section dealing with legislative considerations in organizing regulatory agencies, the performance of regulatory agencies in federal departments, the organization of aviation regulation, presidential influence on independent agencies, and representation of interest groups.

The section on the policy function is disjointed and heavily tinged with legalism. The five articles deal with the constitutional issue of delegation of powers, presidential coördination of policy, the review of administrative regulations, mandatory hearings in the rule-making process, and policy conflicts in radio regulation. Professor Stoke has some interesting comments on the "institutionalizing" of the presidency and its effects on administration, but the section as a whole contributes little to an understanding of the formulation of policy.

The articles on the adjudicative process have more cohesion than those on policy, although they seemed to the reviewer less penetrating than those on organization. Professor Gellhorn's argument for declaratory rulings is excellent, and elsewhere one may find competent discussions of several of the majority and minority recommendations of the Attorney-General's Committee on Administrative Procedure. As in most studies of administrative adjudication, relatively little attention is given to informal procedures, and to the various techniques of securing consent and imposing sanctions.

HUGH L. ELSBREE.

Dartmouth College.

Politics, Parties, and Pressure Groups. BY V. O. KEY, JR. (New York: Thomas Y. Crowell Company. 1942. Pp. xviii, 814. $3.75.)

Designed as a college textbook, this volume effectively combines the standard, traditional material of the subject with realistic and precise analyses which some of the profession may consider "novel." Instructors bound by traditional thinking will have more difficulty with these unorthodox spots than will their students. The manual should prove a most stimulating teaching aid.

The introductory chapter on "Politics," and the first part of the volume on "The Contenders for Power," are properly founded on the assumption that an adequate understanding of politics cannot be gained by attention to political parties alone. These early chapters deal with a succession of important "clusters of interests" operative in the American political scene. But they do more. Severally, they advance, with illustration, the analysis of a series of "characteristics or features of political behavior." Indicative of the insight shown is the inclusion of a chapter on "Administration as Politics," along with such standard headings as "Sectionalism," "Agrarianism," "Labor and the State," "Business and Politics," "Miscellaneous Interest Groups," and "The Rôle and Techniques of Pressure Groups."

The second and third parts of the volume, "The Party System" and "The Electorate and Electoral Methods," present the usual material concerning parties and elections. Two unusual inclusions are the chapters on "Electoral Behavior" and "Straw Polls." These serve well to introduce students to some of the quantitative and precision work which has been developing in the field.

The final part of the volume, "Diverse Political Techniques," introduces some consideration of matters fundamental to the political order, such as "The Rôle of Force," "Pecuniary Sanctions," and "Education as Politics."

With all its novel features, the volume should still appeal to those of orthodox training, for standard material predominates. The text and references provide ample opportunity for supplementary instruction which would emphasize such approaches to politics as those of political history, party structure or functioning, legalism, political reformism, promotional or defensive philosophy, social "forces," nominal institutionalism, broad comparison, rough personal observation, pressure-group drama, political personalities, problems of the political scene, current factual reference, or the newspaper clipping bureau. The balance of fact and interpretation in the volume is excellent.

The author's claim to some novelty, however, merits emphasis and approval. According to him, it is "the conception of political science as the study of political *power*, its acquisition and retention, (which) is used to lend unity to the diverse materials included in the volume." That is true, but not the whole story. The analysis of political influence or activity is realistic and convincing because it deals with recurring *situations* and with that which actually occurs in various kinds of political situation. The situational approach is implied throughout, and is the methodological key to the volume's successful harmonization of diverse materials (pp. vii, 6, 63–65, 87, 98–100, 112, 139, 166, 167, 173, 253, 527, 710, 737, 742.) We really encounter government and politics, even "structure," "functioning," and "process," in actual situations. The historian and the legalist, the statistician and the behaviorist, the practitioner and the theorist, even the philosopher and the moralist, are at their best when dealing with data and values presented in actual situations. The author is well on the way to a situational political science.

For the student, this vital approach holds several important values. The volume is realistic, and therefore should catch and hold interest as well as afford insight and understanding. Realistic analyses of conditions, factors, relationships, political techniques, and reactions should start the student on the road to intelligent and effective participation in politics. The volume gives some introduction to quantitative and precision techniques of inquiry, while maintaining an eclectic position giving place both to orthodox and to new methods and skills of research. And systematic examination of related varieties of situations is shown to yield a residue more significant than unique facts or single-factor analysis.

HERMAN C. BEYLE.

Syracuse University.

California State Government. BY DEWEY ANDERSON. (Stanford University Press. 1942. Pp. xiv, 350. $2.90.)

From the background of his training in the social sciences and his experience in the legislative and administrative branches of the state government, Dr. Anderson has written a readable and practical book on the government of the state of California. The author's main interest is in making democracy work in state government. Consequently he devotes four of his eight chapters to a discussion of voters, political parties, elections, the legislature, the lobby and pressure politics, and direct legislation. Attention is focused primarily on the processes of government and the forces which cause it to perform as it does. Three chapters deal with the organization and functions of the executive and administrative agencies, both statutory and constitutional. A final chapter summarizes current problems of state government.

One notes the absence of certain topics usually found in such texts. There is no discussion of local government, state-local relations, the judiciary, and relations with the federal government. Constitutional development is only briefly mentioned. References for further study are given at chapter-ends, although a general bibliography is not included.

Operations of the state government receive frank and critical appraisal and evaluation. Many specific and constructive suggestions are made to improve administrative organization and methods and to insure control of their state government by the people. To the reviewer, the chapters on pressure politics and problems of state government are the most interesting sections of the book.

Designed for students in high schools and colleges, the volume can also be used profitably by public officials and citizens who wish to understand and to improve the government of their state.

FRANK M. STEWART.

University of California at Los Angeles.

The Higher Civil Service of Great Britain. BY H. E. DALE, C.B. (Bristol: Oxford University Press. 1941. Pp. xiv, 232. $2.50.)

At the outset, it must be said that this is a most illuminating book. Written by a retired member of the higher civil service who recently concluded nearly forty years of experience with the rank of principal assistant secretary and a C.B., the sparkling pages of this "inside" story differ refreshingly from the customary "official" productions. Although the author respects the confidences of his one-time colleagues, he writes with the sure touch of one who has lived behind the scenes. The result is an exciting, diverting, and highly instructive volume, to find the equivalent of which one would have to go back perhaps to Sir Henry Taylor's more sardonic essay, *The Statesman.*

The higher civil service is not the equivalent of the English administrative class. It is the upper crust of this *corps d'élite* who are habitually called into consultation by ministers on the special subject-matter of their respective competences. Dale calculates their number in 1939 at about 550, from among a total administrative class of nearly 1,500 and a total "civil service" of about 450,000. They include permanent undersecretaries, deputy or second secretaries, principal assistant and assistant secretaries, and private secretaries to ministers, together with legal advisers and a small number of technical officers. This number is barely sufficient, as the author sagely observes, to make a line (if all members were laid in a row head to heels) stretching up one side of Whitehall from the Ministry of Health to Trafalgar Square!

The weight of the influence of this administrative corps has often been noted. Here the reader finds an account of the formal relationships and, more important, of the inner socio-psychological *milieu* from which influence springs. The formal relationships are described in the second chapter, "Daily Life," in which a pattern of internal departmental operation is revealed that is a startling parallel to the working of a great department or agency in the federal government of the United States (pp. 23–27). Dale thus confirms from a distant shore what Macmahon and Millett have already demonstrated, that the federal government now has a well-developed, although imperfectly organized, higher civil service. One suspects that a further parallel might appear in an amplification of Brecht and Glaser's *German Ministries*, and an exploration of these likenesses and differences would make an important contribution. High officials, the author notes, spend most of their days in talking and listening; "the higher a man rises in the service, the less he writes and the more he talks and listens."

American readers will learn much about the higher public service of Great Britain (and something about the author) from his description of official temper of mind and disposition. What motives impel a brilliant university student to a civil service career? Dale's answer is threefold. For young men who are poor and without family influence (pp. 69–70), there are "really only two decent possibilities," school mastering at a public school (English reading) and civil service. Sons of fathers with an income between £1,000 and £2,500 which will cease with the elder's life face much the same dilemma and provide a "large contingent of admirable candidates." These two classes make up the large majority. They are supplemented by a third, small and tending to become less: "the sons of opulent and aristocratic families" who may choose the civil service by reason of family tradition, or to acquire a valuable experience, or to seize what they believe "the best chance of doing solid work for their country."

The diminishing proportion of those who belong to the upper class leaves the author with more than a trace of nostalgia for the old days. At the end, he agrees that more has been gained than lost by "this inevitable change," but he develops at some length the thesis that the introduction of young men of "modest" circumstances who are "brought up in a household with one or at most two servants" produces some civil servants with two defects (pp. 74–75): lack of self-confidence, i.e., the talent "of unconsciously behaving in all circumstances as though he were a member of the one profession that gives true liberty of action and speech, 'ample private means';" and lack of mental and nervous energy, which has been sapped by early over-exertion in preparing for the competitive examinations. The continued predominance of men from the upper social class in the higher civil service is urged by Dale because it facilitates the smoother operation of government, ministers themselves still being dominantly drawn from the same class. One recalls in this connection the recent study by Hiram M. Stout, *Public Service in Great Britain*. But the doctrine of homogeneity might be turned to different uses in a post-war Britain; and it would appear strange in a society such as the Canadian or American.

Three types of young personalities are subjected to the traditional framework of the British civil service. "Sometimes the Service acquires a man of intense energy, great driving force, and devouring zeal to improve his share of the world"—in forty years, the author recalls four, none of whom entered by the usual administrative class examination. These men, one gathers, are the spiritual forebears of such American demoniacs as Robert Moses. Although Dale does not identify them, it is clear that Sir Robert Morant is one; it is a pity that no adequate biography of this notable figure exists. Then there is a more numerous body who are by nature scholars, writers, and philosophers rather than administrators. Between the two is the great majority: "admirable specimens of the educated and capable middle class, intelligent without being noticeably responsive to new ideas, industrious, trustworthy, moderately ambitious, not enamoured of the Civil Service (or of any other profession) as such, but resolved to do their duties in it. . . " (p. 98).

To students of British government in its larger framework, the discussion of the relations of the civil service with ministers, with Parliament, and with the Treasury will perhaps be of greatest interest. Here the daily life of the British higher civil servant differs in degree, perhaps in kind, from that of his counterpart in the United States.

Two points in conclusion. What can we learn from this book concerning the soundness of war-time criticism of the British civil service? Very little—partly because the book was written before September, 1939; partly because the author (if he has been correctly read) would be more responsive to criticism that the present model represents a departure from 1910 than to the comment that it is inadequate to crisis government.

What can be learned about the conditions of the formation of an American higher civil service? Much—partly because the analysis demonstrates to any informed American reader that we already have the substance, if not the form; partly because it exemplifies so clearly that an institution of this sort must be an indigenous product, most delicately balanced with and adjusted to its political and other contemporary institutions.

These paragraphs fail to do justice to a notable book, full of insight, deft in reference, ripe in wisdom, and, in the best tradition, adorned with an occasional quotation from the classics. It will be as inevitable a companion of students of British institutions as Jennings' *Cabinet Government*, Finer's *The British Civil Service*, and that still enduring English quarterly, *Public Administration*.

LEONARD D. WHITE.

University of Chicago.

India and Democracy. BY SIR GEORGE SCHUSTER AND GUY WINT. (London: Macmillan and Company. 1941. Pp. xvi, 444. $5.00.)

Modern India and the West; A Study of the Interaction of Their Civilizations. Edited by L. S. S. O'Malley. (London: Oxford University Press. 1941. Pp. xii, 834. $10.00.)

India and Democracy is essential to an understanding of the extraordinary complexity of the problem of establishing democracy in India. The first part of the book, on the present political situation in India, is by Mr. Wint. He was for four years a League of Nations official in China, and subsequently spent two years in India studying its political problems. The second part is by Sir George Schuster, a Liberal member of Parliament who was for seven years Finance Member or treasurer of the Central Indian Government. He discusses plans for the solution of the present political deadlock and for the place of India in the post-war world. Both authors write with knowledge and restraint, and both display an undertone of pessimism. They agree that the large measure of self-government already established has not created a democracy in spite of the 36,000,000 electors, but has transferred power from a British bureaucracy to an Indian oligarchy. Peasants form the vast bulk of the electorate, and Sir George Schuster believes that a genuine democracy cannot exist until the governments of India carry out a protracted and very difficult campaign to educate them and to raise their standard of living. His chapter on the relation between rural reform and industralization is one of the best in the book.

Both writers regard the lack of unity in India as the most serious obstacle to the creation of democratic government. Rightly or wrongly, the Moslem and other minorities are convinced that Gandhi's Congress party is determined to control all India under a single party system analogous to that of the Kuomintang in China, using the parliamentary form of government as a means of ensuring continuance in power. The hostility of the Moslems to the Hindus has greatly increased since 1937, and their opposition has hardened toward any form of government which would place them under Hindu control. The great princes are equally hostile, and are a power to be reckoned with. Sir George Schuster's conclusion is that the British form of parliamentary government, with its principle of majority rule, has become unworkable in India. Since voting will long continue on communal lines, it would mean that the Moslem and other minorities would form the permanent legislative opposition, while the Hindus, who are dominated by the Congress, would always control the government. The experience with minorities in Europe is cited to prove that a constitution based on the principle of majority rule would break down, since the permanent minority would have no hope of ever coming to power. Sir George Schuster canvasses various suggested alternatives; but his principal point is an appeal to the Indians themselves to break the deadlock by devising some form of democracy which is better suited to their needs than is the British constitution.

Modern India and the West furnishes an excellent background to Schuster and Wint's study of the existing situation. Two introductory chapters are contributed by the editor, Mr. O'Malley, one on the state of Indian civilization in the seventeenth and eighteenth centuries, and the second an historical survey of the impact of Western civilization upon India. This is followed by separate chapters by various British and Indian authorities upon law, education, the press, transport, economic development, Hindu and Moslem cultures and religions, the primitive tribes, the emancipation of women, literature, political nationalism, and the effect of Indian civilization upon the West. Finally comes a general survey by Mr. O'Malley, about a quarter of the whole book, in which he summarizes and comments upon the other contributions and deals with subjects which they have not covered, such as the growth of political nationalism. The method involves a certain amount of overlapping: the land laws and their effect upon the farmers, for example, are dealt with in the chapters upon law, economic development, and the general survey. The duplication is not serious, and the result is that the subject is covered in an exceedingly comprehensive and detailed manner. At the same time, the treatment is clear, well balanced, and impartial. The impact of the West has changed India from a static to a dynamic society, and the sub-continent is in a stage of transition. So far, the ferment is largely confined to the small Western-educated minority; but it has begun to affect the agricultural three-quarters of the population. The two books should be required reading for any who think that India's problems can be solved merely by the application of Western ideas and formulas.

LENNOX A. MILLS.

University of Minnesota.

I Paid Hitler. BY FRITZ THYSSEN. (New York: Farrar and Rinehart. 1941. Pp. xxix, 281. $2.75.)

This book, which is the result of collaboration between Fritz Thyssen and Emery Reves, the head of an international feature syndicate, is capably translated by César Saerchinger. Some of the chapters are not corrected or revised, although they were dictated by Thyssen himself before he had to flee from the German invaders at the time of the fall of France. I see no reason to doubt the authenticity of the material contained in the book, and I think it constitutes a valuable source of information, corroborating, as it does, many important observations made by others about recent German developments.

Fritz Thyssen, the author, was a powerful German industrialist, a

Rhenish Catholic, an ardent German nationalist, who became an early supporter of the Hitler movement and in 1931 a member of the party. He explains his relations with Ludendorf and with Hitler and the other Nazi leaders. In October, 1923, he gave Ludendorf "about 100,000 gold marks" for the Nazis. In 1928, he "placed Hess in possession of the required funds" for paying for the Brown House. At another time, he financed the improvement of Göring's apartment in Berlin. "Altogether," wrote Thyssen, "I have personally given one million marks to the National Socialist party." This he did because he "believed that the Young Plan spelled catastrophe for Germany" and because he believed the Nazis "to be sensible and rational."

Later on, in 1935, he broke with the party and in 1938 resigned from the Prussian Staatsrat. Just prior to the outbreak of war, he escaped from Germany, and the book is partly a confession of his poor judgment and fatal error in believing that Hitler would save the German people. The chapters on "Nazi Quack Economy" and on "Nazi Organized Graft" are very revealing, and the many opinions about German post-war developments, including the occupation of the Ruhr and other events of the republican period, are illuminating. But they show more than anything else that Thyssen and the forces he represented will not be very helpful in the reconstruction of a free Germany after the war.

The book contains much interesting material, but it is very sketchy and poorly organized. Thyssen's speculations about Hitler's ancestry, about Himmler's membership in the Oxford Group, and about the desirability of a monarchy in Germany do not add much to the reliability of the volume. Nor does Thyssen's solution of the German problem, namely, the establishment of two German monarchies—one in the east and one in the west—appear sound. The book does, however, illuminate the background and operations of the Hitlerian system, and it reveals some of the more intimate reflections of an important but disillusioned German mind.

James K. Pollock.

University of Michigan.

La Grande Crise de la République Française; Observations sur la Vie Politique des Français de 1918 à 1938. By Yves Simon. (Montreal: Editions de l'Arbre. 1941. Pp. 237. $1.75.)

This is the seventh book that has come from the pen of Yves Simon, although he is still in his thirties. The place of publication has some significance. Dr. Simon does not like Vichy. He regards Marshal Pétain, and those who put him forward, as pursuing a calculated policy of treason; he depicts Laval as "a politician of the mean sort"; and, therefore, in France he has not a place where to lay his head. His narrative has a personal tone:

there is a good deal about Simon, his birth, his Catholic affiliations, the circumstances that kept him from doing military service (his brother died as a volunteer in 1917). He does not mention the fact that, when the Flemings took control of Ghent University and the Walloons established a rival Institute for the purpose of maintaining French culture, he played a part, probably with the accolade of Paris. He is a philosopher, one somewhat addicted to esoteric themes. When he comes down from the empyrean to survey mundane affairs, he does at times resemble the Emperor Sigismund *super grammaticam.* It is a bit startling to be told that the French electoral system (*ballottage*) is based partly on proportional representation.

He does not sketch, as an historian or even a politician would, the course of events during the twenty years of peace. He assumes that his audience is familiar with what has happened and gives mainly comment and criticism. It was said of George Moore that, when describing Venice, he did find room for some canals and gondolas, but only as background for a portrait of George Moore. Similarly, we get a portrait of Yves Simon. It is interesting. This middle-class Catholic does not adjust himself readily to organized political groups. He speaks devastatingly of *Action française,* of Maurras and Daudet, and of their "enormous dose of lies." In spite of their attitude toward the Church, he has no harsh words for Socialists and Communists. He refers to Jean Jaurès almost with awe, and to Léon Blum with the greatest respect. Definitely he believes that French policy should rest on friendship with England and on cordial relations with a de-Hitlerized German democracy. France cannot rely upon military power. She should have clung to the League of Nations. The opponents of the League were "chiefly visionaries who believed that France would be safe with a strong army (or, later, with a Maginot Line), cynics, satanists, and acquiescers who, with restrained emotion, saw catastrophe approach, but who hoped that it would not arrive in their own time."

This is a book that, being allusive rather than descriptive, will vex the ignorant. But the interpretation of events seems sagacious; and, if the author escapes old familiar categories and leaves us at times baffled and bewildered, he may represent the new generation groping for a new national policy.

EDWARD MCCHESNEY SAIT.

Pomona College.

Government of the Argentine Republic. BY AUSTIN F. MACDONALD. (New York: Thomas Y. Crowell Company. 1942. Pp. xii, 476. $3.75.)

The Argentine Republic is unquestionably the most important and among the most progressive of the Spanish-speaking states in Latin America. The value of its exports and imports surpasses all others, and it boasts the largest railway mileage, the most motor cars, the largest number of telephones, and the largest and finest capital in South America. Argentina is fully appreciative of its primary position among the American republics, and perhaps for that reason has been jealous and suspicious of the United States, its greatest rival in the Western Hemisphere. Nevertheless, in its government Argentina has not hestitated to copy the federal system as exemplified in the United States, although with such modifications as have been deemed more suitable to local conditions, as for example the considerable attention given to the presidential cabinet in the Argentine constitution.

No adequate study of the Argentine government has been made since Dr. L. S. Rowe wrote his scholarly monograph over twenty years ago. Therefore, Professor Macdonald had a fallow field for his investigations, and he has taken the fullest advantage of the opportunities afforded. Beginning with a brief historical survey of the constitutional development of the Argentine government, the present governmental structure is analyzed and its workings portrayed in considerable detail.

Some of the procedures which have developed in the Argentine governmental system should interest the political scientist considerably. The provision of the election laws for compulsory registration of every male citizen after he reaches the age of eighteen gives the government all essential information for enforcing military service and brings to the attention of the young citizen that his vote is an important privilege. The results of the Argentine system of limited voting have apparently been unsatisfactory. The right of the federal government to intervene in a province to the extent of removing all provincial officials—a power that has been employed 129 times since the existing constitution was set up in 1860 —is a most interesting development of centralized control. Professor Macdonald concedes that "such federal interference may be good government within the province, but certainly it is not self-government."

As regards the personnel of government, the president of Argentina has even greater powers than the president of the United States, and in the field of foreign affairs treaties negotiated by him need only a majority vote of the Congress instead of a two-thirds vote of the Senate, as we require. Argentina, like the United States, has experienced the rising cost of government, with a present outlay eight times as large as in 1900, although with only a threefold increase in population. Professor Macdonald's treatment of the various fields of federal administration is particularly comprehensive, thereby affording the reader an adequate appreciation of the government as a going concern. Provincial and local government are covered briefly, and comprehensive bibliographical references follow each chapter. The only suggestion for improvement of the study from the reviewer's standpoint would be a fuller presentation of the author's personal conclusions concerning the subjects which he has so objectively and adequately presented.

GRAHAM H. STUART.

Stanford University.

Behemoth; The Structure and Practice of National Socialism. BY FRANZ NEUMANN. (New York: Oxford University Press. 1942. Pp. xvii, 532. $4.00.)

The Roots of National Socialism. BY ROHAN D'O. BUTLER. (New York: E. P. Dutton and Company. 1942. Pp. 304. $3.00.)

These two books, both of considerable importance and originality, should be read together because, looking on the same reality from two different points of view and using different methods, they will leave in the mind of the reader a more complete and better balanced impression of the German National Socialist system.

The book of Mr. Neumann is an almost encyclopedic survey of the development and present functioning of Nazi Germany. In the enormous flood of literature now covering the most spectacular dictatorship of our period, there is no treatise which offers such an amount of facts and critical evaluation as does this one. It is not too much to say that there is no single aspect of the German problem to which the author does not contribute some important facts, interesting sidelights, or a new hypothesis. As a former German lawyer, systematically trained in both jurisprudence and philosophy, he gives us a synthesis based on intimate knowledge of personalities and events chiefly instrumental in the creation of the Germany of our day.

The author chose *Behemoth* as the title of his work in allusion to the famous book of Thomas Hobbes in which the English philosopher analyzed England during the Long Parliament, representing it in contradistinction to his *Leviathan* as a non-state, a kind of anarchy and lawlessness. This is exactly the conclusion which Neumann arrives at concerning Nazi Germany: it is, according to him, a non-state, a perfect anarchy of egotistic fighting groups, without a final integration under a really sovereign will, without a doctrine, a principle, an ideology which would mean more than an arbitrary demogogic attempt to cheat the masses. Both generalizations will arouse contradiction, because until now the Nazi state has been able to carry out the supreme will of the Führer in all controversial issues, crushing all opposition of the dissident groups. Similarly, to deny a real ideologic foundation to the Nazi state because of its emotionalism, mysticism, and its compilatory character is an over-rationalistic postulate which forgets sentimental and irrational elements often present, even outstanding, in the ideologies of dynamic social transformations.

The chief claim of the book, however, does not lie in the systematization and enlargement of our knowledge concerning the Nazi experiment. The ambition of the author goes much farther than this. He tries to show that most of those who have investigated the Nazi experiment were on the wrong track. The dominant tendency of the post-war literature has been the rejection of a purely or preëminently economic explanation of the totalitarian state, stressing the historical, ideologic, sentimental, and individual factors in its development. This anti-economic interpretation went so far as to affirm the preponderance of the political forces over all categories of the classic economic science. Already Rudolf Hilferding, the theorist of the German Social Democratic party, has stated very clearly: "What a government economy does is precisely to abolish the autonomy of economic laws; it is not a market economy, but an economy for use. What is produced and how it is produced is no longer determined by the price but by the state planning commission, which fixes the character and the extent of production." An influential literature has interpreted the whole story as the "end of competitive capitalism," the "end of the economic man," the era of the "managerial revolution."

Such a hypothesis is manifestly contrary to the Marxian doctrine, which regards every fundamental political change as a change in the development of the productive forces of society. The author tries to invalidate this whole anti-Marxian conception, showing that what really happened in Germany was an expansion of monopolistic capitalism which, with the help of the Nazi political structure, has enlarged its monopolies and destroyed most of the competitive forces of the previous market economy. His main conclusion is therefore this: "The German economy of today has two broad and striking characteristics. It is a monopolistic economy—*and* a command economy. It is a private capitalistic economy, regimented by the totalitarian state. We suggest as a name best to describe it, 'Totalitarian Monopoly Capitalism'" (p. 261).

This thesis is expounded and documented in a survey of one hundred forty condensed pages in which the author endeavors to demonstrate that in the Nazi experiment Monopolistic Capitalism and not the Nazi State was victorious, that it created the necessary economic order for its own benefit, that all the essential categories of the capitalistic system continue to function on a higher level and with an enormous expansion of the productive forces of society. The "economic man" is not at all dead. On the contrary, the motives of competition, of profit, are manifesting themselves with a renewed vigor.

Space forbids us to accept the challenge of this argument. The impression of the reviewer is that the conclusions of the author are based on an over-emphasis of certain facts and an under-accentuation of others, and on the introduction of a number of new technical definitions about the meaning of "market economy" and "capitalism." For instance, when he tries to prove that the Nazi economy has remained a profit economy, almost a super-profit economy, he says: "As regimentation spreads, as price control becomes more efficient, as regulation of the credit and money market becomes more stringent, as the government strengthens the monopoly of the capital market, and as foreign trade evolves into a political operation, the need to make profits becomes increasingly urgent. Profits are not identical with dividends. Profits are, above all, salaries, bonuses, commissions for special services, over-valuated patents, licenses, connections, and good will. Profits are especially undistributed profits" (p. 355.) Such a definition of profit, mixing economic elements with those of graft, political pressure, and special illegal privileges is manifestly too vague for deciding the fundamental controversy.

The reviewer thinks that the author over-stresses the power of the economic interests, of the rather tolerated capitalism, and underrates the real power of the Nazi machine; furthermore, that he does not stress sufficiently the fact that this monopolistic capitalism was a product of the militaristic state, planning exclusively for war and using the party mechanism of the Nazis to crush all resistance against war collectivism. At the same time, the author strongly under-values the ideologic forces without which the Nazi war-state would be unthinkable. And though he has contributed brilliant pages to the understanding of those ideologic factors (for instance, the charismatic leadership, racism as a factor in eliminating class struggle, the enormous significance of the Nazi fake equalitarianism, and the great possibilities of the forces slumbering under the artificial machinations of the *Kraft durch Freude* and the self-destruction of propaganda), he is inclined to regard all these non-economic elements as simple propagandistic devices to cheat the populace, and to interpret the Führer and all his underlings as perfectly uninfluenced and unbound by their own ideology.

And here is the point where the work of Rohan Butler, a fellow of All Souls' College at Oxford University, seems to me a healthy counter-weight to keep the balance of the whole picture. In tracing the roots of National Socialism, Butler describes one hundred fifty years of German intellectual history, showing that there is no single item in the Nazi philosophy which was not previously announced by some eminent German writer, philosopher, or politician who commanded high respect in the most influential German public opinion. Of course this is not a new and original observation. Already before him many able writers (to mention only Aurel Kolnai, H. Mankiewicz, and above all Jean Edouard Spenlé, the author of a splendid and not sufficiently recognized book entitled *La Pensée Allemande de Luther à Nietzsche*) have traced the genealogy of the Nazi idea. But, whereas these writers remained somewhat on the surface by elaborating occasional analogies between Nazism and previous currents, the present author shows the organic continuity and the almost inevitable finality in the German development—a fact which in itself would exclude a supervaluation of the economic motive. A further advantage of Butler's book is that he excludes almost completely men of smaller and occasional significance and concentrates exclusively on the real landmarks of German thought from the romanticists until the present date. And he has accomplished this task, not by giving loud and sensational excerpts for the corroboration of a thesis, but by presenting with a great dialectic and intuitive force the real essence of the German thought. Even those who have known all or most of the documents which Rohan Butler presents will often be literally overwhelmed by the inner logic and the almost horrifying weirdness of the German spiritual development. Because this is the really astonishing thing in the German situation: There is practically nothing new in the German synthesis. All its elements may be found in the literature of other nations too. But, whereas these elements remained individual particularities or odd extravagances with the writers of the other nations, they have become a rigid dogmatic system in the German soul, directed primarily against the fundamental values of Western civilization. The author demonstrates this point pertinently. At the same time, he is fair-minded enough to see some valuable elements in the German thought which appear as an enrichment of the liberal atomistic ideology of the West. As a matter of fact, he devotes some highly interesting pages to analyzing the structural differences between the German and the Western thought, a difference which was thoroughly grasped in its tragic consequences by the great historian E. Troeltsch in an address delivered in the heyday of the Weimar Republic.

And this remains a fundamental problem of the future: What should we do with Germany after the war? The question will be answered quite differently by the protagonists of economic determinism and by the believers in a special German spiritual structure. For the former, economic prosperity and free political institutions would solve the problem. For the latter, a wholesale remolding of the German mentality would be the prerequisite to all other reforms.

OSCAR JÁSZI.

Oberlin College.

World Order in Historical Perspective. BY HANS KOHN. (Cambridge, Mass.: Harvard University Press. 1942. Pp. xiv, 352. $3.00.)

The struggle of man for "world order" and the underlying conditions of its existence constitute the theme of the four essays in this volume, which is the fourth in a series by the author written since 1936. Democracy nationalism, and imperialism are viewed in historical perspective, and in relation to the present "crisis" of civilization, a crisis which is viewed as an "unprecedented challenge which can be met only by an unprecedented response, the establishment of a world order based upon liberty and equality." The crisis is viewed as different from all preceding ones, because of "its universal scope" and "its decisive character."

This "crisis of civilization" results from the challenge which nationalism and imperialism, in their contemporary forms, make to democracy. It has been the tragedy of the democracies that they have not recognized the nature of the crisis. Their unawareness caused that "intellectual and moral confusion" which made it possible for National Socialist propagandists to "proclaim to the whole world that democracy was obsolete and effete, and that fascism was the wave of the future. The Fascist powers "had vision and courage, and they put these virtues into the service of total corruption. The democracies, much less corrupted, had neither vision nor courage." "They continued to drift in the old direction, but . . . the goal seemed lost, the vigor gone."

The German revolution of 1933 is viewed, not as a product of "historical necessity," but rather "as a result of many historical accidents, of mistakes made by its adversaries, of intrigues and of personalities." It represents the triumph of "Prussianism, Romanticism, racialism, and Nietzscheanism" over the finer German spirits of the past. It is a "counterrevolutionary movement against the human progress of the last three centuries." The United States is seen as the "shield of world democracy," and the ultimate and decisive adversary of National Socialist Germany.

As forecast by Marx in 1848, the end of "national exclusiveness and particularism" has arrived, and an "unprecedented challenge has been thrown down to man." This crisis is not a war of races or of continents. It is not against Asiatic Russia, nor the Yellow Peril. It is a war to determine what sort of system will supplant the era of "national exclusiveness and particularism" which is now being relegated to the past.

The author is neither pessimistic nor optimistic. He presents the contemporary dilemma and points out that things which have seemed visionary in the past are now accomplished facts. It is possible for this to be true of "world order." It is for man to decide. Dr. Kohn's chapter on nationalism is a brilliant analysis of the problem, and his entire book is a challenge for us to face the future with determination and unity. "Only United Nations, developing a growing sense of unity, can win the war."

George Bernard Noble.

Reed College.

The Coming Age of World Control. By Nicholas Doman. (New York and London: Harper and Brothers. 1942. Pp. x, 301. $3.00.)

This is a challenging book, intended "to offer an approach to our thinking about the basic requirements and conditions of world organization and peace." Mr. Doman explains that by "world control" he does not mean world domination, but rather world government; the word "control" is, however, significant of his emphatic conviction that a very large measure of authority must be exercised by a world state if there is to be peace and order in the future. The title therefore suggests the general thesis of the book, namely, that the trend of international development has been toward the integration of political units and political institutions, and that this trend is bound to continue.

Mr. Doman develops this thesis in ten chapters, divided into two parts: "From the Age of National States to the Age of World Wars," and "From the Age of World Wars to the Age of World Control." His general argument runs about as follows: (1) The system of national states is a temporary system only, which fits well enough into the conditions of the nineteenth century, but which is now "anachronistic, a cluttersome relic from past times." (2) The character of the first and second World Wars, as wars of ideologies rather than of nationalisms, makes logical, necessary, and possible the abandonment of the system of national states for something else. (3) Assuming the defeat of the Axis, there must follow the creation of a world state, supernational in character, at any rate so far as the maintenance of peace is concerned. (4) This world state should be universal in scope, should be democratically organized, and should have a monopoly of armed force in order to be genuinely effective.

These points, which are here stated very summarily, are argued most persuasively. Many matters relating to the problem of world organization are not discussed at all, but Mr. Doman has his reasons for that. He is definitely interested in the political rather than the economic approach, for he believes that "without political foundations a plan for a world-wide economic order will remain an empty dream." He expressly disclaims any attempt to draw the blueprints for his political world state, desiring to deal only with basic principles. He is probably at his best in discussing the problem of force, and he goes into some detail with respect to the nature, organization, and distribution of the international police (Chap. VII). He is no visionary, and understands the necessity of a transitional stage, and of coercion by the victors. "The organization of the international police force will never be initiated if we wait for the concerted efforts of every nation in the world." The vanquished Axis must be totally and unconditionally disarmed, and there must not again be any nonsense about equality of disarmament.

Unlike some others who have their own plans for world organization, Mr. Doman shows also that he understands the established League of Nations and fully appreciates its tremendous importance in the development of international government. It failed, in his opinion, because it was too completely what was implied by its French name, *Société des Nations,* a voluntary organization. "No world order is feasible if its indispensable constituent parts are allowed to withdraw at their whim or to refrain from joining. Compulsory adherence of every geographic region of the earth is indispensable for any organization that wants to regulate the political problems of the world effectively. Adherence is not equivalent to coöperation, yet absence from the world organization permits the retention of free action on the part of national or other units. A potential nucleus of resistance against the democratic designs of the political world organization could create precarious conditions. On the other hand, the resources of even the spiritually non-coöperative members are at the disposal of a universal organization; they can be commandeered in the interest of the organization lest they aid the revolt against the supernational world order."

Many of us will regret that Mr. Doman has passed over so lightly the problems of organization in such a world state as he contemplates, and many of us will doubt that the democratic nations, perhaps particularly the United States, are yet ready for so powerful a world state. His analysis is, however, a significant and stimulating contribution, which cannot be ignored. In the words of Lincoln, so aptly quoted in this book: "The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise with the occasion. As our case is new, so we must think anew and act anew. We must disenthral ourselves, and then we shall save our country."

CLARENCE A. BERDAHL.

University of Illinois.

Survey of International Affairs, 1938: Vol. I. BY ARNOLD J. TOYNBEE, ASSISTED BY V. M. BOULTER. (London and New York: Oxford University Press. 1941. Pp. x, 735. $9.00.)

After recovering from his initial surprise that a survey of international affairs for 1938 contains no material on the Munich crisis of that year (a matter which will be treated in a separate volume of the *Survey*), the reader can settle down with the assurance that Professor Toynbee and his colleagues have prepared a competent summary of other events on the basis of the documents now available. Particularly outstanding is Mr. Harold Beeley's treatment (pp. 414–479) of the British mandate for Palestine. Students familiar with the 1937 Report of the Royal Commission on Palestine can find in Mr. Beeley's section of the *Survey* an admirably impartial and thoroughly documented continuation of the story down to the outbreak of war in 1939. Arab and Revisionist terrorism and aims, British imperial interests, the abandonment of the Partition proposal, the abortive London conferences, and the White Paper of May 17, 1939, are presented and analyzed with skill.

"World Economic Affairs" is discussed (pp. 1–128) by Mr. Allen C. B. Fisher, with special emphasis on "economic autonomy" and Axis trade policies. Mr. G. E. Hubbard continues his treatment of the Far East through 1938 (pp. 493–573), with a conclusion that unless Japan could overcome the active and passive resistance of China and increase the industrial development of Manchuria, it looked in 1938 as if she would have to relinquish her plans for a New Order in Eastern Asia. (It is only fair to add that the material for this volume was largely written prior to September, 1939.)

In an interesting, though somewhat tendentious, section (pp. 574–663) on the American attitude toward world affairs, Mr. David Mitrany sees isolationists behind every bush and in every wood-pile and regrets that their views "made it impossible for the Administration to pursue an open course" instead of having to resort to subterfuge and circumvention in matters such as the Neutrality Acts. It seems to the reviewer that it is impossible to gauge American public opinion by relying so heavily as Mr. Mitrany has on "the leading Eastern newspapers" to discover what America thinks. The Appendix to the *Congressional Record* (compare the period from June, 1940, to Pearl Harbor, for example) would give a better cross-section of American *editorial* opinion, but even this alone is a doubtful criterion of "what America thinks."

Of European affairs, this volume traces events from the fall of Mr. Eden through the fall of Austria. The seizure of Austria by Hitler is soberly chronicled with but slight additions to our previous knowledge. It is surprising to find the editor willing to cite *The Times* correspondent, but apparently unwilling to refer to journalism such as G. E. R. Gedye's illuminating *Betrayal in Central Europe*. The liquidation of the Spanish War is discussed in an informative section (pp. 260–413). Two brief but interesting portions of the *Survey* deal with the *de jure* recognition of France and the *de jure* recognition of Italian sovereignty over Ethiopia. If, as Mussolini is reported to have said, *de jure* recognition is nothing but a miserable fig-leaf covering a concrete reality, it has nevertheless been much sought after as conferring the seal of respectability on conquerors.

A great deal of painstaking work has gone into the preparation of this volume. It is a useful addition to the series.

HERBERT W. BRIGGS.

Cornell University.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

The one hundred seventy-fifth anniversary of the founding of Rutgers University was celebrated by the presentation of three distinguished papers on federalism in the United States. *Federalism as a Democratic Process:* Essays by Roscoe Pound, Charles H. McIlwain, and Roy F.

Nichols (Rutgers University Press, pp. 90, $1.25) explores the origin and traces the growth to the Civil War of the American federal system. Dean Pound, in demonstrating that "a federal polity is necessarily a legal polity," points out the indebtedness of American federalism to Puritan conceptions of individualism and of local political organization. Professor McIlwain presents the historical evidence for the existence of the federal principle in the earlier history of the British Empire. The old relations of Wales, Scotland, Ireland, and the Channel Islands are brought out and dusted off to show their influence upon the pamphleteers of the American Revolution. From the general knowledge of the constitutional issue possessed by the founding fathers, the conclusion is reached that these British precedents must have been "one of the prime sources of the federal frame of government under which we still live." But Professor Coker, in commenting upon the paper when it was read, expressed doubts whether the men of 1787 were consciously or subconsciously influenced by the early English examples. Professor Coker's challenge is important, because it shows with that care historical data must be handled if it is to be of value to political science. In the last essay, Professor Nichols develops the idea that the Civil War marks "the turning point in the evolution of federalism in the United States and made possible the new federalism of the present day." He points out that federalism in this country has been a pattern of living and thinking ingrained in the nation rather than a system of government set forth in the Constitution. The political controversies which led to the Civil War resulted in a change of pattern, but not to the destruction of federalism.—WILLIAM SEAL CARPENTER.

Albert C. F. Westphal informs us that his monograph, *The House Committee on Foreign Affairs* (Columbia University Press, pp. 268, $3.00), "originally intended to be a full-length study of the rôle of the House of Representatives in foreign policy, has been whittled down to an analysis of the Committee on Foreign Affairs." The original purpose of the author is much in evidence, however. While obviously it would be impossible to describe the work of a particular committee without a certain amount of discussion of the House as a whole. Mr. Westphal has developed in considerable detail the comparative importance of the House and Senate in relation to foreign affairs. A natural conclusion is that since the House plays much the lesser rôle, the House Committee on Foreign Affairs is also of less significance than the Senate Committee on Foreign Relations. The author calls attention to the fact that neither committee "chose to describe itself as a Committee on *Foreign Policy*," the latter term suggesting "conduct, purpose, and continuity in international matters, elements most closely associated with the executive office." Mr. Westphal has presented a carefully documented study of a phase of American legislative machinery. In addition to books and printed reports, he has made extensive use of the unpublished materials in the Committee's possession or deposited in the Library of Congress. Rather sterile prior to 1913, these *Minutes* are more copious after that date. Is this an indication of an increasing interest in foreign affairs? Dr. Westphal states that "since 1935 legislation on foreign affairs has done much to bring the Committee into public and legislative prominence, although it is too early to predict that it will retain that position." He adds that "perhaps the most severe indictment that can be made against the House Committee is that its members have not developed into a body of experts, or even quasi-experts, who understand the complexities of foreign policy." Since the organization and control of the House are geared to the party system, the chairmen of the Foreign Affairs Committee have, with few exceptions, supported the President's policy. Mr. Westphal discusses critically the various proposals made by scholars to secure a larger congressional rôle in foreign policy, but sees no solution in any of them. In conclusion, one may say that Mr. Westphal's monograph has fulfilled its purpose: "to study functionally, primarily since 1898, the work of the one committee in the lower house that embraces within its jurisdiction those matters which bear most directly and immediately on our international relations."—EVERETT S. BROWN.

Persons working in the field of municipal government and administration will find the ninth edition of *The Municipal Year Book, 1942* (International City Managers' Association, pp. x, 685), edited by Clarence E. Ridley and Orin F. Nolting, even better than previous editions; and many had thought the ceiling of merit had been reached and that further improvement could not be expected. The book is growing not only bigger and better but unfortunately more costly, the price now being increased to $8.50. The regular features of previous editions are brought up to date by reporting 1941 data, and some new sections are added. The additions include a 96-page atlas containing maps of the United States and of the 48 states; data on refuse collection charges; metropolitan communities; and city-owned parking lots. In a new section on "War-time Organization of Cities," attention is given to local defense councils, their organization and work, and especially their relation to city governments. A list of recent publications on defense activities enhances the value of this section. "Federal-City Relations," a regular feature of the *Year Book,* takes on special significance this year, offering a summary of national defense legislation having a bearing on municipal problems. These two sections present an over-all picture of the impact of war on city affairs. In addition, the authors of several of the sections on municipal activities, such as housing, public works, police, fire, and recreation, give attention to problems arising out of the war effort. The *Year Book* provides an excellent means of keeping up on current problems in the field of municipal government—what they are and what cities are doing about them. It either gives the answers or tells where they can be found. Not only is the information there, but it is usable, being well organized and well indexed. Previous reviews in this journal have referred to *The Municipal Year Book* as "indispensable for those actively working in the field of municipal government and administration" (1941); "an authoritative résumé of what's what in city government" (1940); and "a fit addition to a series of distinguished volumes" (1939). The present reviewer agrees with all the good things that have been said about the *Year Book*; and so far as he knows nothing bad has been or can be said about it.—CHARLES M. KNEIER.

The Minnesota Commission of Administration and Finance, 1925–1939 (University of Minnesota Press, pp. xiv, 160, $2.00), by Lloyd M. Short and Carl W. Tiller, is the story of one state's efforts to improve its public administration. The account provides a desirable chapter in the growing volume of analyses of governmental reorganization in the states since the last war. A brief historical sketch of the establishment of the three-man Commission helps to explain some of its subsequent successes and failures. The agency was born out of political strife, and its initial efforts were conditioned in no small part thereby. In fact, the political aspects of this administrative body throughout its fourteen years of existence should be of extreme interest to students concerned with the relation between politics and administration. The organization, personnel, and procedure of the Commission are discussed briefly—somewhat too briefly, perhaps, for such important aspects of an administrative agency. The work that the Commission was supposed to do and the work that it actually did are interestingly contrasted. In all of its several functions—budgeting, control of expenditures, auditing, supervision of accounting, purchasing, personnel classification, and other miscellaneous activities—the Commission was ever subject to the wills of the governor and legislature. The powers of appointment and appropriation were ever available to stimulate or thwart the Commission in performing its statutory functions. The hindrances were more numerous than the stimulants. Conflict between the Commission and other state agencies, such as the University and the Railroad and Warehouse Commission, was habitual. Despite the limitations imposed upon the agency, however, it was able to focus attention on certain outstanding defects in Minnesota's administration. The authors attribute a number of recent reforms in the state to the Commission's efforts prior to its demise in 1939.—CLAUDE E. HAWLEY.

Students interested in the important problems of planning in the United States after the war will be indebted to the Twentieth Century

Fund for its report on *Post-War Planning in the United States* (pp. 158, $0.60), prepared for the Fund by Dr. George B. Galloway. The magnitude of the effort that will be needed to meet post-war readjustments is forcefully suggested by a survey describing the work of thirty-five government agencies, thirty-three private agencies, eleven industrial and financial organizations, sixteen trade associations, and seven rail, highway, water, and other transportation agencies. Although Dr. Galloway finds much of the research still in the planning stage, certain common assumptions and objectives constitute the basis for the plans now taking shape. With few exceptions, American post-war planning anticipates a United Nations victory. Preservation of the private enterprise system is widely taken for granted by both the public and private agencies in their research projects. There is, however, some question whether private enterprise can provide adequate employment and security for America's millions of employables without assistance. In addition to describing the activities and identifying their personnel, the report classifies the agencies according to the fields of planning; and extensive and selected bibliography is provided. The Twentieth Century Fund intends not only to continue its own post-war studies and activities, but to issue revised editions of Dr. Galloway's report as more information becomes available. Such a service can avert unnecessary duplication among the ever-increasing organizations undertaking post-war research, and also assure the general public that serious thought is being given to American post-war problems.—BELLE ZELLER.

Protection of the consumer against exploitation by unscrupulous producers and distributors has become a necessary function of the state in this technological age. Stephen Wilson's *Food and Drug Regulation* (American Council on Public Affairs, pp. xi, 177, $3.25) deals with one vital phase of this problem. Although concerned only with the federal Food and Drug Act of 1906 and its successor, the Food, Drug, and Cosmetic Law of 1938, the study inferentially throws much light upon broader questions and issues. It is a bill of particulars on conditions and causes which have led to abandonment of the traditional *laissez-faire* theory of government and economics. The detailed accounts of the struggles which produced the two regulatory acts provide excellent illustration of the functioning of pressure groups in the legislative process. The chapter dealing with enforcement of the 1906 law constitutes an illuminating case study on the difficulties of implementing a vaguely-phrased legislative statute relating to a most complicated subject. While there is no attempt to emphasize lurid details, the facts revealed concerning conditions in the food and drug trade are quite startling. The concluding chapter, which attempts to survey the broad social and economic implications of the regulatory laws, is, perhaps necessarily, somewhat superficial. An index, a table of cases, and the texts of the two statutes under discussion would add to the book's usefulness. Despite its limited scope, this is an informative, interesting survey of governmental policy in a matter of concern to every individual.—JOSEPH E. KALLENBACH.

It is impossible to write a one-volume work on Thomas Jefferson's long, full, and many-sided life without a severe delimitation of treatment. In his *Jefferson* (Harcourt, Brace and Company, pp. 459, $4.00), Saul K. Padover might have indicated his delimitation by some such subtitle as *Philosopher-Politician;* for he deals rather fully and sympathetically with the political and philosophical Jefferson, but rather sketchily with Jefferson as secretary of state and president. He is understandingly interested in the intellectual and scientific depth and breadth of the mind that was Jefferson's; in his grasp, preaching, and practice of democratic ideas; in his contact with the agrarian frontier and with the French Revolution; in his wide social contacts, whether with George Washington or John Adams or Tom Paine or Julius Melbourn, a cultured Negro who had been born a slave and who was entertained in Jefferson's home "with the same warmth and courtesy as . . . a French marquis." Mr. Padover reflects somewhat the influence of the late Ambassador William E. Dodd, who as a teacher first interested him in Jefferson. To say this is to say that the author has caught and conveyed the spirit of Jefferson, with eyes on both the past and the present. Jefferson is pictured as the wealthy democrat who was considered the radical of his day and who would have been labelled "red" had the term been in vogue. The economic reactionaries of Jefferson's time could be those of Franklin D. Roosevelt's time. The picture is thus, in part, an expansion of Claude G. Bowers' *Jefferson and Hamilton,* although less polemical in tone than the Bowers account. While utilizing the best works on Jefferson, Mr. Padover has relied strongly upon his own absorption of substance from Jefferson's writings. His bibliography has a serious gap or two. His best chapter is perhaps the last one, entitled "Sage."—H. C. NIXON.

That pressure groups, chief of which is business, characterize the struggle for control of our governmental process is the theme of *Economic Power and Political Pressures* (U. S. Government Printing Office, pp. ix, 222, $0.25), by Donald C. Blaisdell, assisted by Jane Greverus. The study appears as No. 26 in the T.N.E.C. series. In the contest to dominate public policy, business groups have greater "staying power," cohesion, and resources than do other organizations. The authors show, too, that these advantages, with the addition of relative invisibility, place business in a favorable position *vis-à-vis* government itself. The major portion of the study is valuable in bringing up to date Professor Herring's *Group Representation Before Congress.* Leading pressure groups and their recent activities are analyzed as to membership, philosophy, and techniques used to disseminate their ideas. A complete picture is presented as the authors discuss the important groups under general headings which include, among others, business, industrial relations, utilities, and agriculture. A chapter on "Contacts with Government" shows Congress as the focus of group attention, but the executive, the administration, and the courts are not neglected by these pressure groups and their lobbyists.—DAVID G. FARRELLY.

Mr. Thurman W. Arnold's latest book, *Democracy and Free Enterprise* (University of Oklahoma Press, pp. 81, $1.00), consists of the Baxter Memorial lectures delivered at the University of Omaha. Throughout the four chapters, the author emphasizes the urgent necessity of freeing production of restrictions imposed by cartels, monopolies, and labor and other groups—a theme familiar to all who have followed his brilliant career as assistant attorney-general in charge of antitrust law enforcement. Though lacking the epigrams and the paradoxes which characterize *The Symbols of Government* and *The Folklore of Capitalism, Democracy and Free Enterprise* displays the same realistic sense and balance manifested in those two books and in *The Bottlenecks of Business*. Mr. Arnold is forthright in exposing the fallacies underlying antiproductive ideas and methods which have characterized our economy from factory to farm. He is at his best, perhaps, in the chapter entitled "The Ideal of a Managed Economy." In his concluding chapter, "The Place of Antitrust Enforcement during the War," he outlines a program for freeing the production and distribution of goods from the artificial restraints imposed by interested groups. Mr. Arnold's ideal of an economy based on principles of industrial democracy designed to get the products of the mine, the field, and the factory to consumers may not be attainable, but history justifies his hope that the present war can, in his words, "blast the theory of scarcity out of our economy."—ROBERT J. HARRIS.

Completed in 1916, the manuscript for *History of Legislation for the Protection of Coal Miners in Pennsylvania, 1824–1915* (International Publishers, pp. 239), by Alexander Trachtenberg, now makes its appearance as a bulletin of the Bureau of Labor Statistics. Materials for the study were obtained chiefly from visits to a good many mines, talks with miners and operators, union publications, reports of mine inspectors, Pennsylvania legislative journals, statutes, and court decisions. After a chapter in which the author describes early English mining laws, some of which were brought to Pennsylvania by English immigrants, the author traces a long and bitter fight in the chief coal-producing state of the Union for the regulation of child labor, safe and healthful working conditions, shorter hours, honest weighing, cash payment of wages, accident insurance, and improved conditions generally. Like most retrospective studies of the Industrial Revolution, this one demonstrates the inhumanity of a *laissez-faire* economy and incites admiration for those who suffered and those who fought for the welfare of the common man. Every page shows painstaking research and, though the careful, almost tedious, recital of details precludes wide popular appeal, the book will prove valuable for reference. Readers will hope that someone will soon trace the history of mining legislation from 1915, where the author leaves off, down to the present time.—JOHN H. FERGUSON.

Always welcome to students of the many-faceted field of state government and administration are those monographs which present the specific case of an individual commonwealth. Timely and well written is Roscoe C. Martin's *The Growth of State Administration in Alabama* (Bureau of Public Administration, University of Alabama, pp. x, 96, free). Professor Martin's workmanship in handling his materials, historically and analytically, is excellent, within the limits of the volume. His criteria of measurement are: functional growth, growth in administrative machinery, expansion of personnel, financial development, and growth in population. Numerous tables and charts convey graphically the growth of Alabama's administrative machine from the Jeffersonian simplicity of 1820 involving less than fifty thousand dollars and ninety-two employees to the modern concept of the service state with over nine thousand employees and a budget of over sixty-two million dollars. Throughout the study the reviewer is impressed by Alabama's adherence to the pattern of development in other states. Changes in public attitude and shifting modes of management support the author's concluding observations and his delineation of trends. Although older services persist, the newer service functions of the state have been placed in a position of predominance.—DAVID W. KNEPPER.

America Organizes to Win the War (Harcourt, Brace and Co., pp. x, 395, $2.00) represents the work of a group of distinguished contributors upon the American war effort. With the exception of the contributions under the names of President Roosevelt, Vice-President Wallace, and Prime Minister Churchill, all were written for the direct purpose of inclusion in this volume. The list of authors includes Henry Steele Commager, Max Lerner, S. L. A. Marshall, Claude Wickard, Paul de Kruif, and others well-known as writers or prominent in public life. Together the chapters form a well-planned volume on the war and peace aims of the United States and "how we propose to carry them out." Topics concern the organization of the land, sea, and air forces, psychological warfare, censorship, the cost of the war, public health, morale, and what Americans are doing or should do to win the war, whether they are farmers, industrialists, members of a labor organization, scientists, or students. While changing events have rendered obsolete some of the factual material, the volume remains one of the best of its type yet to appear. It is particularly valuable for introductory courses in American government where the teacher desires readable and pertinent material upon the American war effort.—ROBERT S. RANKIN.

The somewhat prosaic title of John Comer's *New York City Building Control, 1800–1941* (Columbia University Press, pp. 289) may not attract as much attention from students of public administration as the book deserves. As the title indicates, the author traces the evolution of the present building controls and the development of the agencies to administer them in the city of New York. However, the book is no mere recitation of historical data that must have been very difficult to collect. Rather it is so organized and written that basic questions of public administration are brought into bold focus out of the impressive mass of detail. Here, in the story of building control in the nation's largest city, are the fundamental problems of the limits of administrative discretion, the arbitrariness and rigidity of attempted statutory control, the merits and feasibility of centralization and decentralization, and the difficulty of separating policy-making from administration. Here is a record of the influence of personalities on administrative practice and of the inevitable intertwining of politics and administration. Here is substantial evidence of Professor Freund's statement that administrative actions tend to develop into customary law. The study is well documented and has a useful index.—WILLIAM J. RONAN.

Federal Crop Insurance in Operation (Stanford University Wheat Studies of the Food Research Institute, Vol. XVIII, No. 6, pp. 229–290, $1.25), by J. C. Clendenin, is a concise and scholarly analysis of three years' experience with all-risk wheat crop insurance by the national government under the Federal Crop Insurance Act of 1938. Making considerable use of tables and maps, Professor Clendenin describes and evaluates the contractual, actuarial, and operational aspects of the program carried on by the Federal Crop Insurance Corporation and closes with some observations and suggestions about the program as a whole. In addition, there is a brief appendix with notes on private experience with crop insurance in the United States, crop insurance in foreign countries, action in Congress and federal departments prior to 1937, and federal insurance of crops other than wheat and several tables showing the growth of the wheat-crop insurance program, the extent of participation in the program, loss experience on FCIC contracts, average wheat yields and premium rates, administrative expenses, and experience on FCIC yields and premium rates in selected countries. The monograph, as a whole, is well organized and well written and is worthy of the attention of those who are interested in this aspect of the government's agricultural program.—E. M. KIRKPATRICK.

While the volume, *Federal Regulation of Labor Unions* (H. W. Wilson Company, pp. 286, $1.25), has been compiled by J. V. Garland as an aid to debaters, it serves the further purpose of making available a handy source of references upon this ever-lively subject. The book contains reprintings of twenty-eight periodical articles and speeches on all phases of the vexatious problem. An outline of the arguments presented and a bibliography of considerable length supplement the well selected materials. For additional help, a list of organizations from which literature and information upon the topics discussed may be obtained concludes the work. The volume makes no pretense to being anything more than a handbook for consultation and an introduction to the "significant differences" and "dominant positions" held on the question. As such, it keeps well abreast of the standard set by other issues in the Reference Shelf series.—HILTON P. GOSS.

FOREIGN GOVERNMENT AND POLITICS

In his *Pierre Laval* (Oxford University Press, pp. vi, 265, $2.50), Henry Torrès has contributed a revealing document to the post mortem *dossier* of the Third Republic. While sketching in intimate terms the tortuous career of this evil "genius in corridor machinations," the author gives us vivid sidelights on the interplay of intrigue and corruption which paved the way for the tragedy of 1940. To the shrewd, horse-trader peasant from Auvergne, observes M. Torrès in a singularly penetrating passage, France was but "a thing—the thing of three to five hundred voracious parasites who were able to lay hands on a country, bare it of its substance, and lead it to perdition: the coalition of interests and appetites, shady financiers and business men, wire-pullers, exploiters of corruption, who handle the powerful levers of public opinion, all working in the same direction." Utterly devoid of principle or generous impulse (unless it be a slavish devotion to his daughter), Laval is portrayed as the archtype of scheming French politician. We see him as the renegade socialist who managed for years to exploit his working-class origins to his own political advantage; as the manipulator of crooked deals, both in and out of public office, who always arranged somehow to escape the clutches of the law; as the fomenter of defeatism in two wars who eventually emerges as the fascist-minded strategist of "collaboration" with the Nazi conqueror of his country. M. Torrès does not pretend to write with detachment. His is the bitter indictment of a close political associate from whom estrangement was forced, gradually but inexorably, by the logic of events. The definitive political biography of Pierre Laval remains to be done, but the man who attempts it will have to draw upon this volume for much of his evidence.—WALTER R. SHARP.

The rôle of the Primrose League as the innovator of many procedures now commonplace in political organization has long been well known, but a detailed and objective account of its origin and activities has been lacking. This gap in the literature of political parties has been filled by Janet Henderson Robb, in *The Primrose League, 1883–1906* (Columbia University Press, pp. 258, $3.25). Miss Robb has written a thorough and interesting history of the Primrose League in its heyday. Her book is based upon a mass of contemporary manuscript, pamphlet, and periodical materials. By perusing its own minute-books and other records, and by observing some of the modern activities of the League, she has succeeded nicely in capturing the spirit of this colorful political machine. The Primrose League doubtless had. considerable influence upon British policy, particularly in the imperial sphere, during the period covered by Miss Robb's study, but its claim to lasting importance lies rather in the field of political techniques and methods of propaganda. It was the first organization to proselytize by the skillful use of social appeals. It led the way in mixing entertainment with political propaganda. It successfully organized the masses, and especially women, in the interests of a political party. It was the first really effective auxiliary party organization. Miss Robb's book will be valuable to the historian as well as the political scientist. It is full of valuable sidelights on the social and economic history of the late Victorian period. It is regrettable that the author did not include at least a sketch of the history of the Primrose League after 1906. It is true that its importance has declined since that date, but it is still an active organization, and an extremely effective one in winning adherents for the Conservative party.—JOSEPH R. STARR.

INTERNATIONAL LAW AND RELATIONS

Among the "Studies in Foreign Affairs" recently published by the American Council on Public Affairs are some excellent monographs. Dr. Hugh O. Davis' *American Trade Equality Policy* (Pp. x, 137, $3.00, cloth, $2.50, paper) is a further contribution to this series; but his is one of lesser distinction. The documentary materials which the author uses have, for the most part, been widely exploited in other connections. However, he has made a careful study of both the documents and the subsequent secondary materials and comes forth with new conclusions. A major point of his thesis, which does not seem too firmly established when one has finished reading his volume, is that equality of treatment has always been fundamental in American commercial policy. His most careful analysis is given to the origin and chronological development of the *conditional* most-favored-nation clause inserted as Article II of the treaty of amity and commerce between France and the United States in 1778. This singular departure from the long-accepted unconditional type of most-favored-nation clause is credited to the French Foreign Office as to origin, but, as is generally known, the continued use and stress given to conditional agreements has been American. In view of all the difficulties and complications which have resulted from our use of such a policy (difficulties which the author does not for a moment overlook), it is not easy for us to agree that, whatever the complications, the policy of the United States has been consistently or fundamentally one of equal treatment for all. As W. S. Culbertson points out in the Introduction, "in practical commercial relations the conditional clause and interpretation have either forced us into an attitude of negation and quiescence, or, when we have attempted active commercial relations, left us pursuing a policy of discrimination" (p. viii). Even the author admits that the conditional clause outlived its usefulness. It came to have too many forms, connotations, and applications. Under it, there were "unilateral and unlimited" provisions, "reciprocal and unlimited" arrangements, and finally, "reciprocal and limited" agreements. Under this last "came such exceptions, limitations, and restrictions as the prohibitions imposed in the interest of plant, animal, and insect life; rights of foreigners; protection of public health, morality, and security; regional régimes based on preferential treatment accorded either for reasons of geographical contiguity or ethical association; and finally, tariff classifications, anti-dumping duties, countervailing duties, and quantitative exchange-control restrictions" (pp. 129–130). In short, all of the familiar weapons of exaggerated nationalism, short of the military, were evolved under this final interpretation of the conditional most-favored-nation clause. The recitation of such a list of evils has a familiar ring in the ear of a student of United States tariff and foreign trade history.—JOHN DAY LARKIN.

The story of the largely futile attempts to obtain international agreement and action for the conservation of birds and mammals is told by Sherman S. Hayden in *The International Protection of Wild Life* (Columbia University Press, pp. 246, $3.00). Hayden brings together material not before collected on the international efforts to protect migratory birds and marine mammals and to establish natural communities for the preservation of wild life. The material he has been able to gather is by no means voluminous, as the amount of international action has been discouragingly little. Indeed, Hayden finds that, with some birds and marine mammals, so little is known about their habits that effective conservation would scarcely be possible without much more research into their life histories. It is not surprising to discover in a world of national states that can provide little security for human life that there has been widespread indifference to proposals for conserving wild life. It is interesting to observe, however, that various national governments have reacted on questions of wild life conservation in a pattern similar to their behavior on other matters of collective security. There is the recurring insistence by some states on bilateral agreements and predilection of others for multilateral conventions. There is the willingness to sign treaties embodying general principles with no means provided for their enforcement, and the omnipresent resistence to the establishment of an effective international administrative body to carry out pacts that embody specific protective measures. Some small beginnings, looking toward wild-life conservation have been made, particularly in the London Convention of 1933 relative to African game preserves and the North Pacific Fur Seal agreements denounced in 1940 by the Japanese. Hayden has no illusions about the future of wild-life protection. He finds that wars set back conservation movements several decades, and that only a world enjoying the luxury of peace can really contemplate wild-life preservation. A number of appendices give the texts of the more important conservation treaties, and there is a very extensive bibliography.—William J. Ronan.

Information on industrial development in the countries of Southeastern Asia has been difficult to obtain, unless the inquirer was prepared to carry out much diligent research through a wide range of scattered materials. The merit of Jack Shepherd's *Industry in Southeast Asia* (Institute of Pacific Relations, pp. v, 133, $0.75) is that it gives a succinct picture of the degree of industrialization on the eve of the war in Indo-China, the Dutch East Indies, the Philippines, Formosa, Thailand, Burma, and Malaya. The general situation in all these countries was the same. All of them depended for their prosperity upon the export of their foodstuffs and raw materials. The principal industries were connected with the preparation of their products for the world market, such as tin smelters, rice mills, saw mills, and cocoanut oil and sugar refineries. With the partial exception of the Philippines, these industries were controlled by Western, Chinese, and Japanese capital. The very limited amount of native capital was found almost exclusively in the traditional handicrafts such as handloom weaving; and most of these small industries had suffered severely from the competition of imported machine-made manufactures. The heavy fall in the world price of Southeastern Asia's exports which followed 1929 had very serious effects upon native prosperity, and one principal cause of the industrialization of the 'thirties was the desire to make the countries less dependent for their prosperity upon the sale of a few staple products abroad. There was a considerable expansion of manufacturing, particularly in the Dutch East Indies. The governments took a prominent part in this development through the media of protective tariffs, quotas, and subsidies, or at times through actual participation in the new enterprises. Native handicrafts were galvanized into new life, and Western capital was encouraged to establish factories. The movement had a moderate degree of success; but Southeastern Asia will long continue to be predominantly an agricultural and mining area.—LENNOX A. MILLS.

For many years it has been popular to condemn Western colonial powers as "imperialistic," and to imply that motives entirely selfish, and even sordid, underlay the retention of all colonies. For some strange reason, this opprobrium has been heaped upon the more enlightened powers, and in turn has been used by the Axis nations as a strong propaganda point in their already bulging arsenal. In his *Formosa Today* (Institute of Pacific Relations, pp. ix, 193, $1.00), Andrew J. Grajdanzev shows the dangers inherent in blindly following these popular misconceptions. By using official Japanese figures and the reports of semi-official agencies, a picture of Japanese colonial exploitation is presented which makes the charges against other powers fade into insignificance. Figures are presented to show that instead of Japan pouring money into Formosa, most of the costs of development have been borne by the colony itself. Small native businesses are being forced out by large Japanese corporations making up to fifty per cent profit a year. Such corporations buy up real estate, thereby raising land values and making it almost impossible for ordinary farmers, about sixty-eight per cent of the population, to own their own land. This has meant a steadily decreasing return to the farmer for his labor at the same time that the land-owning companies were increasing their profits. In fact, the exports of as long ago as 1937 represented "not less than three-fourths of the total net value of production of Taiwan . . . , " and were controlled by Japanese companies. In 1938, the gross value of sugar cane raised was ¥ 78,200,000, while *exports* of sugar amounted to ¥ 189,258,000. The same facts govern industry and commerce in general. Such economic domination has its counterpart in the political sphere. " . . . we may say that after forty-five years of Japanese rule Taiwan is a colony in the government of which the islanders have no voice whatsoever and in which the Japanese themselves as citizens have little or no influence. The island is ruled by the governor-general with the help of the army and police" (p. 163). No such blasting statement can be made concerning any of the so-called "imperialistic powers" about which so much has been said. In its quiet way, this study gives the reader a greater sense of the gulf separating Japanese and American philosophies of life and government than many more lurid and popular publications. The volume furnishes basic facts supplied by the Japanese themselves, and describes a colonial regime which should be compared with the activities of the United States in the Philippines. The study should be in the hands of all persons interested in the Far East.—ANDREW E. NUQUIST.

Japan and the Opium Menace (International Secretariat, Institute of Pacific Relations, and Foreign Policy Association, pp. xiv, 170, $1.50), by Frederick T. Merrill, has value for political scientists for three reasons.

First, in connection with China, it shows the ebb and flow of effective regulation of opium production and consumption in relation to the political and governmental evolution of the country. Second, an introduction by Joseph P. Chamberlain and a concluding chapter on "The International Aspect of the Opium Problem in the Orient" not only summarizes adequately the steps taken internationally to bring opium and the traffic in narcotic drugs under control, but also brings into relief some aspects of the problem of international organization. The conclusions presented, i.e., that "the success of the international anti-drug campaign depends essentially on (1) the universal ratification of international conventions, (2) their adequate enforcement *in all countries* by able, experienced, and efficient national agencies, (3) close and active coöperation between the governments and an international coördinating and supervising authority, and (4) a minimum of political stability based on the respect by all countries of certain minimum standards in the conduct of international affairs . . . " can be applied in respect to other international activities than the anti-drug campaign. Third, the book shows the effect on both national and international administration of developments in the field of international politics. Beyond this, the book is important for those who are concerned with the opium problem in its historical and non-governmental aspects. In spite of the title, the author did not succumb to the temptation to minimize Chinese responsibility for conditions in China, although he does make it clear that the Japanese must bear the major share of responsibility for the increase in addiction within the last two decades, and especially since the Chinese government, after 1934, resumed the movement (in abeyance during the military period) to lessen cultivation of the poppy and to eliminate opium-smoking in the territories under its control.—HAROLD M. VINACKE.

Seldom has a book been more timely than *Modern Burma; A Survey of Political and Economic Development* (University of California Press, pp. ix, 381, $3.00), by John Leroy Christian. Issued under the auspices of the Institute of Pacific Relations, it was first printed in Shanghai just in time to fall into the hands of the Japanese after Pearl Harbor. Its reprinting in the United States, however, is not an unmixed blessing, as this has permitted the addition of a valuable chapter bringing the story down to the end of January, 1942. Thus at the moment that Burma dominated the headlines of the newspapers, the first general treatment of that country since Alleyne Ireland's monumental work published in 1907 was ready to supply both the expert and the lay public with the answers to many questions. *Modern Burma* is a mirror held up to that land by one who has lived there nearly a decade. There are chapters on the racial composition and the geography of the country; on its history, both domestic and diplomatic; on government, agriculture, commerce and industry, the social structure, the arts and education, religion, communications (including the Burma Road and the proposed Kra canal); and on foreign relations both within the Empire and with the surrounding Asiatic peoples. A great deal of work has gone into the preparation of the volume, as the documentation in the footnotes and the annotated bibliography testify. If there is any criticism at all, it is that the presentation of such a wealth of material in the relatively limited compass of some 300 pages of text makes the fruit of all this labor a sort of handbook. Professor Christian answers questions only to raise others which time alone can answer. The whole volume is a warning to those who would rush into any facile settlement for Southern Asia after the war. The political immaturity of the Burmans, the reactionary influence of the Buddhist priesthood, the presence of racial minorities within Burma's borders, the latent fear among the Burmans that they may be surmerged in a flood of Indians or Chinese, the Chinese claim to suzerainty, irredentism in Burma's ancient enemy, Thailand—these are a few of many problems which must rise to plague the unwary architect of peace in Asia. One is left with the fear that what has been said of Thailand applies to Burma, namely, that it is "a country rich enough to inspire cupidity, weak enough to tempt ambition, and foolish enough to court embroilments" (p. 277).—JAMES T. WATKINS, IV.

The bombs that fell at Pearl Harbor awakened in the United States an interest in Japan which a host of writers have since been trying to satisfy. Their books, coming from the press in an ever-increasing stream, range in quality from the scholarly excellence of Hugh Borton to the journalistic extravagance of Hallett Abend and James K. Young. Of them all, the most valuable single volume for clearing up misconceptions which the average American entertains about Japan and the Japanese is, in the opinion of this reviewer, Hugh Byas' *The Japanese Enemy; His Power and His Vulnerability* (Alfred A. Knopf, pp. ix, 107, $1.25). It is a little book (just a hundred pages) which appeared early this year. The author is familiar to readers of the *Times* of London and the *New York Times* for the sound articles on Japan which he has contributed for many years to those newspapers. *The Japanese Enemy* was written in the weeks following Pearl Harbor, partly to satisfy the sudden demand for information about Japan, and even more to warn those easy optimists who felt that war with Japan would be mere child's play for the United States. In successive chapters, Mr. Byas discusses the possible motives which led Japan to attack the United States; the type of reasoning which appeals to the Japanese; the vastness of the stage upon which the drama must be played; the struggle for political power which goes on in Japan; the economic, military, and ideological assets of the country; and some of the conditions of victory. Particularly valuable is the chapter entitled "Who Runs Japan?" None of the chapters is long. There is no attempt to be exhaustive. This is rather the work of a keen observer of Japan who is also sensitive to the questions troubling the American public, and who has selected the more important for attempted answer.—JAMES T. WATKINS, IV.

In *Social and Industrial Problems of Shanghai* (Institute of Pacific Relations, pp. 74, mimeographed, $0.50), Eleanor Hinder has produced additional facts and interpretations which excellently supplement Robert W. Barnett's *Economic Shanghai: Hostage to Politics,* also a publication of the Institute of Pacific Relations. Miss Hinder writes "with special reference to the administrative and regulatory work of the Shanghai Municipal Council. As chief of the Social and Industrial Division of the Shanghai Municipal Council, she has done a pioneer piece of work in the Shanghai International Settlement in bettering industrial conditions and in developing a consciousness of working conditions among employers, both foreign and Chinese. The author discusses industrial conditions, economic and social aspects of employment, employment relations, labor organization, housing, and problems of food, nutrition, education, and child protection in relation to workers in Shanghai. Two factors—lack of adequate legal authority to regulate industrial conditions and lack of understanding of modern employment requirements by the Chinese employers—conditioned the effectiveness of Miss Hinder's work for the Shanghai Municipal Council. Progress toward better conditions received set-backs because of the two wars of 1932 and 1937. Miss Hinder, however, found that the new problems occasioned by hostilities had to be dealt with, and in some cases older difficulties were lessened. Writing before December 7, 1941, Miss Hinder sees signs of progress in new plants, changing attitudes of Chinese employers to balance the great difficulties caused by refugee populations, plant destruction, and the like. It is highly probable that, in spite of complete Japanese control of Shanghai now, the progress made under Miss Hinder's able administration will be of lasting benefit to the Chinese on resumption of their authority over the city.—WILLIAM C. JOHNSTONE.

In three lectures published under the title, *The Interests of the United States as a World Power* (Claremont Colleges, pp. 64, $1.75), Whitney Hart Shepardson points out very emphatically that the basic interest of the United States is its own security. "It is the foremost duty of the state to provide conditions under which the individual can live out his life, free from fear of attack. Without this freedom, the other freedoms cannot be had" (p. 18). In the first of the three lectures, Mr. Shepardson relates the principle to our national past and to our present war effort. The final two lectures are devoted to the question of how the security of the United States can best be promoted in the post-war world—assuming, of course, victory by the United Nations. Here the reader will find concrete and sometimes controversial suggestions about European settlement. The armistice, believes Mr. Shepardson, should be signed at Berlin, or perhaps at Brest-Litovsk. There should be not one peace treaty with Germany, but two—a preliminary military *Diktat* followed sometime later by a general European treaty, negotiated with Germany as a full participant. As for the post-war rôle of the United States, isolationism is implicitly condemned as a rejection of our true national interest. The United States and Great Britain, both motivated by a common search for security, must take common action to prevent another German aggression. This small volume is delightfully written and provocative. A post-Pearl Harbor publication date attests to its currency.—WILLIAM I. CARGO.

In *The British Columbia Fisheries* (University of Toronto Press, pp. xii, 136, $1.00), W. A. Carrothers contributes to the Political Economy Series a study of a regional Canadian industry and of the problems of government arising therefrom. Most attention is paid to the salmon fishery, with briefer consideration to whaling and sealing, halibut, herring, and other fisheries. A careful description of each industry is given, with extensive statistical data. The relations of federal and provincial jurisdiction over the fisheries and the development of federal tariff policy are discussed. Of special interest is the analysis of the difficulties surrounding Canadian-American coöperation in conservation measures in the Fraser River sockeye salmon fishery. Negotiations between the two countries directed toward the coördination of salmon regulations and the establishment of a joint commission of control were frustrated in 1911 and 1919 by the hostility of the state of Washington to federal control of the fisheries within its territorial limits. Further sectionalism of this kind delayed a final settlement until 1936–37, when a treaty establishing an international Pacific salmon fisheries commission was ratified by Parliament and Senate. In the case of the halibut fishery, the Canadian-American treaty of 1924 set up a joint commission to regulate the industry; and we are told that "the Commission has achieved marked success in the work of conservation, and is an outstanding example of international coöperation."—GORDON SKILLING.

Two lessons for the student of international affairs stand out in Joseph E. Davies' *Mission to Moscow* (Simon and Schuster, pp. 659, $3.00). One is the fact that the President and the State Department reach conclusions on foreign policy on the basis of better information than that available to the rest of the country. The fact that the late Senator Borah held himself up as better informed on foreign affairs than the President seems even more appalling in retrospect than it did in July, 1939. The second lesson is the utter realism of Soviet foreign policy. The Russians were not fooled by appeasement or what it meant for any of the European Great Powers. They were not fooled by Hitler. Nor did they fool themselves in their pact with Germany in August, 1939. They took *Mein Kampf* seriously and worked feverishly to prevent a Hitler victory. Their diplomatic efforts to organize collective security failed. Fortunately, their own defense preparations were more successful. Mr. Davies keeps reiterating that Russian strength was not greatly impaired by the purges, which he discusses at some length. One can only hope that his general conclusions stand the test of 1942 as well as that of 1941. We should be grateful for this capable inside view of the pre-war picture from the vantage point of our Moscow embassy—and for the State Department's consent to publication of the dispatches, which otherwise would not have been available until years hence.—WILBUR W. WHITE.

Anita Bradley's study of the relations of Latin America and the Far East, in her *Trans-Pacific Relations of Latin America* (International Research Series, Institute of Pacific Relations, pp. xi, 120, $1.00), illuminates a little studied and less understood segment of international affairs. As Western Europe ceases to be the single fulcrum about which questions of war and peace, prosperity and depression, turn, such studies as this will command more respect and attention. The present volume is unpretentiously and accurately described as "an introductory essay and selected bibliography of commercial, political, and cultural contacts between Latin America and the Far East from the time of the sixteenth century Spanish galleon trade to the coolie traffic of the nineteenth and the Japanese colonization schemes of the twentieth century." Future students will be grateful for the twenty-five-page selected bibliography.—WILLIAM T. R. FOX.

Brazil is the first one of the Latin American countries to issue an annual showing the government's participation in international institutes, commissions, congresses, and conferences, together with the names of the Brazilian representatives. This *Anuário da divisão de atos, congresses e conferências internacionais para 1942* (115 pages) of the ministry of foreign relations includes a listing of all treaties and conventions on which the government of Brazil has taken action during the year 1941. The volume has a name index.—JAMES B. CHILDS.

POLITICAL THEORY AND MISCELLANEOUS

The Strength of Nations (Macmillan Co., pp. 268, $2.50), by George Soule, does not deal with international relations, as its title might suggest, but concerns itself with the consideration of a dynamic approach to the study of human institutions. The author brings an indictment against all social scientists for failure to contribute adequately to the solution of the problems of society. His study leads him to the conclusion that we have failed, first, because the social sciences have not developed a scientific approach; second, because they have not discovered any basic principles universally accepted by the scientists themselves; third, because each social scientist has isolated himself in the narrow compartment of his own discipline, thus blocking the advance of scientific inquiry; and fourth, because the social scientist conducts aimless research for its own sake (p. 21), and does not realize that other disciplines, notably psychiatry, can contribute to the attainment of truth. Since the basic explanation of the problems that vex humanity lies in the nature of man himself, the author feels that none of the social sciences can progress far without psychology and psychiatry. In fact, he explains attitudes, both individual and national, toward certain economic and political institutions in terms of psychiatry, discusses totalitarianism in Freudian terms, and points out why totalitarian revolutions must eventually fail. But the author does not content himself with a list of accusations; he presents the reader with constructive suggestions for a new set-up in the social sciences, including the adoption of a scientific method, acceptance of the view that there must be developed a general social theory relating to all aspects of behavior, and recognition that the separate social disciplines can be used only as an approach rather than as water-tight compartments of knowledge (p. 200). He envisions the training of experts as "doctors of society" in place of doctors of philosophy, entailing the study of all social sciences instead of one, including fundamental training in dynamic psychiatry and an internship in practical matters either in government or in business. He sees a Social Science Center, comparable to the modern Medical Center, as a clearing house for the solution of public problems. For the political scientist, the author's suggestions have no novelty; they are very much on the same order as those advocated by Merriam of Chicago nearly two decades ago (*New Aspects of Politics*). But the layman finds himself with a book written for him, in non-technical terms, in a facile style, readable and not too profound, dealing with a subject in which an interest has been generated because of the problems brought on by the war. Weighing the political scientist in the scales presented by Mr. Soule's indictment, one feels that although some of his charges may stick, definite progress has been made, particularly as regards the study of political behavior (Lasswell and Gallup) in terms of psychological factors and in respect to an insistence upon a broad foundation in fields such as geography, statistics, economics, and sociology which characterizes the requirements for political science majors on the graduate level in our institutions of higher learning.—ELIZABETH ANNE WEBER.

Although the translation and publication of the *Collected Works* of V. I. Lenin in English was begun as early as 1927, only five volumes (IV, XIII, XVIII, XX, and XXI) have hitherto appeared. To this number a sixth (XIX) is now added (International Publishers, pp. 463, $3.00). Translated by the late M. J. Olgin and edited by Alexander Trachtenberg, this latest volume contains speeches, letters, pamphlets, and articles produced by the Bolshevist leader during the eventful period from January, 1916, to the eve of the Russian Revolution in March, 1917. Much of the material was published originally in the Swiss Socialist press or in the Marxian press of other countries; many of the items, however, were not published for the first time until after Ludendorff, with Machiavellian benevolence, furnished Lenin with express transportation from the land of his exile back to the land of his birth and the Provisional Government succeeded to the government of the Tsar. Many of the principal speeches and articles here presented were prepared by Lenin in his capacity of spokesman of the "Zimmerwald Left," the small group of militant Marxians who, at the two international Socialist conferences held at Zimmerwald and Kienthal, Switzerland, in 1915 and 1916, broke with the existing organization of International Marxism and laid the foundations of the Third or Communist International, subsequently established at Moscow. As might be expected, much of this portion of the volume is repetitious, strongly denunciatory in tone, and suffused with that quality of intellectual arrogance highly developed in great leaders and particularly so in leaders who are also Marxian Communist logicians. Although of a fugitive nature, this portion of the volume will be of value to historians both because of the author and of the events to which it relates. Two or three of the items in the volume approximate the proportions of an essay. This is notably true of the discussion of "Imperialism," which embraces more than one hundred pages. Admittedly relying heavily on numerous earlier cognate works, particularly on those of the British economist Hobson and the Austrian Marxist Hilferding, Lenin, in this essay, advances the now familiar Bolshevik thesis that the twentieth century has ushered in the imperialist phase of national development; that the economic aspect of imperialism is characterized by various forms of monopoly capitalism; and that monopoly capitalism has grown out of competitive capitalism and represents the decay of that form of capitalism and a transition stage to a "higher social-economic order."—ARNOLD J. ZURCHER.

In the current literature on the labor supply problem in war-time, *Labour Supply and National Defense* (International Labor Office, Montreal, pp. 245, $1.00) is a valuable and outstanding contribution. From no other source has come a study so universal in scope. There are obvious difficulties involved in the execution of such a study. It deals with problems of current development. It is an effort to describe the flow of streams whose eddies, and sometimes whose main currents, are continually changing under the influence of fresh obstacles and new contours of channel. Communication being what it is during these years of war, documentation of such a study must inevitable lag behind the latest press dispatches. Furthermore, as far as the International Labor Office itself is concerned, the supervisors of the study have had problems of their own to meet, incidental to the transfer of the office from Geneva to Montreal. In spite of these obvious difficulties, there has been no staff better able to undertake a comprehensive analysis of the labor supply problem in war-time than the International Labor Office, and there has been no current study which has met the needs of students and administrators in so creditable a fashion. While actual field investigation was out of the question, the Office had the advantage of submitting a draft of this report to a tripartite Canadian-American meeting held in Montreal in 1941, under the auspices of the Office. The volume is arranged around two principal headings: the problems themselves and the governmental organization devised to meet them. The problems are four: the allocation of man-power between the armed forces and industry; the control of employment so as to prevent destructive competition for available labor; the vocational training of available labor to defense jobs; and mobilization of labor resources. The countries studied are France, Germany, Great Britain, the United States, Japan, and Australia, Canada, New Zealand, and the Union of South Africa. The fact that labor supply policy has differed in each of these, conforming to the peculiar contours of social conditions in each, led the Office to undertake, with regard to each of the above problems, a monographic presentation of information, country by country, rather than an over-all assembling of facts. As an introduction to this monographic presentation, each problem receives a general analysis of the factors involved. Each of the problems, of course, could be elaborated to a good-sized study in itself, and the Office has made no pretense to exhaustiveness in its analysis of any one of them. Nor has the Office adopted any particular point of view; rather, it has emphasized throughout that the policy of any particular country "is a matter of expediency which can be determined only in the light of the special conditions within any one country at any given moment." This, however, has not prevented incorporation in the study of a set of conclusions formulated in the light of the Canadian-American study referred to above.—SMITH SIMPSON.

Barriers to Youth Employment (American Council on Education, pp. x, 110, $1.75) is an outcome of the larger study of youth and employment initiated by the American Youth Commission under the direction of the author, Dr. Paul David. This monograph should therefore be read in conjunction with Dr. David's contribution in the general report of the Commission (Chapters I–V), *Youth and the Future*, published in 1942. Otherwise it may appear that the special study scants too much the broader aspects of the problem of youth employment. Dr. David analyzes certain factors operating as barriers to youth employment: restrictions on entrance into occupations, seniority, child labor laws, and minimum wage regulations. Each barrier is discussed as a distinctive economic problem involving a special set of economic consequences; no consideration is given, however, to significant geographic differentials or important personal variations. Although the material is highly controversial, the author maintains his sense of proportion and objectivity. His approach to the specific issues between adults and youth seems almost too succinct and statistical, and yet his conclusions are always provocative and to the advantage of the young worker. This is his challenge on which he builds his recommendations: "We need a general awareness of when discrimination against youth is unfair and a general determination to accept youth as people who have rights along with the rest of us." The study is timely, for it presents a practical program of amelioration directed to the post-war future as well as to the current "duration."—MARIAN D. IRISH.

The so-called "Jewish problem" has for obvious reasons been the subject of much recent study. The works edited by Graeber and Britt and by Pinson will be remembered. Supplementing these is *An Appraisal of the Protocols of Zion* (Columbia University Press, pp. vii, 118, $1.00), by John S. Curtiss. This is a careful inquiry into the origins of the notorious Protocols and a summary of the overwhelming evidence demonstrating that they were forgeries, and not very clever ones at that. Even Sergei Nilus, the Russian religious mystic who first published them as authentic documents in 1905, admitted that he could not prove their authenticity. Later it was shown that their text was to a great extent a plagiarism of Maurice Joly's *Dialogue in Hell between Machiavelli and Montesquieu*, which had been a clever attack on the tyranny of Napoleon III. Other parts of the Protocols were borrowed from the works of such outstanding antisemites as Edouard Drumont. The documents exhibit glaring inconsistencies and an astonishing stupidity on the part of their presumably intelligent authors—for example, the Vulgate, and *not* a Hebrew version of the Bible is quoted! How any one could ever have accepted these forgeries as authentic is difficult to understand. But then, as our own day is demonstrating, even the ostensibly learned are not infrequently amazingly gullible.—MULFORD Q. SIBLEY.

Books which help people examine the basic assumptions underlying their social ideas ought to be more popular than they are. At first glance, Gustav Stolper's *This Age of Fable* (Reynal and Hitchcock, pp. xx, 369,

$3.00) looks like a diatribe against the fables of this generation and an attempt to re-state and defend those of a previous generation. The author examines, sometimes scornfully, such fables as the economic causes of war, myths about money, superstitions about the state and government, the attack on the profit motive, the "Have and Have-Not" theory of national conflict, and a host of other propositions which pass all too often for statements of fact. Sometimes the author comes close to refuting a current "fable" by merely asserting a different proposition of his own. Ordinarily, however, this is not the case. Impatient with many of the articles of social faith now in vogue, the author just as ruthlessly examines the fallacies of those who criticize them. The reader who goes through this book will have been led, and frequently irritated, into doing a good deal of thinking for himself.—HAROLD W. STOKE.

Thomas Paine (Longmans, Green and Co., pp. 40, $1.00), by J. M. Connell, is a brief, interesting, and well-written sketch of Paine's life reprinted, with a brief introduction by R. H. Mottram, from a bicentenary notice in the *Hibbert Journal.* It contains very little analysis of Paine's political, economic, or social philosophy, and it makes no special contribution to biographical literature on Paine. There would seem to be little reason for reprinting the article in book form, and the price is excessive.—E. M. KIRKPATRICK.

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AMERICAN GOVERNMENT AND PUBLIC LAW

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The American
Political Science Review

VOL. XXXVI OCTOBER, 1942 NO. 5

GOVERNMENTAL CENSORSHIP IN WAR-TIME*

BYRON PRICE
U.S. Director of Censorship

To a free people, the very word "censorship" always has been distasteful. In its theory, it runs counter to all democratic principles; in practice, it can never be made popular, can never please anyone.

Everything the censor does is contrary to all that we have been taught to believe is right and proper. The Post Office Department, for example, has two proud mottoes: "The mail must go through," and "The privacy of the mail must be protected at all hazards." But censorship stops the mail, it invades the privacy of the mail, it disposes of the mail as may seem best. The same thing holds true in the publishing business. Censorship limits the lively competition and free enterprise of reporters. It relegates many a scoop to the waste basket. It wields a blue pencil—both theoretical and actual—on news stories, magazine articles, advertisements, and photographs. Censorship also enters the radio industry, where it may edit scripts and in some cases stop entire programs.

Yet even the most vociferous critics of the principle of censorship agree that in war-time some form and amount of censorship is a necessity. It then becomes not merely a curtailment of individual liberty, but a matter of national security. It is one of the many restrictions that must be imposed on people fighting for the right to throw off those restrictions when peace returns. Justice Oliver Wendell Holmes once wrote: "When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be tolerated so long as men fight."[1]

---

* Adapted from a lecture delivered at the Catholic University of America, April 13, 1942.

[1] Schenck v. United States, 249 U.S. 47 (1919).

The censorship process is essential to the conduct of war for two reasons: First, it goes a long way toward keeping the enemy from knowing what we are doing on the home front. It prevents him from learning movements of our troops and ships, and how rapidly planes, tanks, and guns are coming down the production line. If it does not always withhold this information completely, it slows it up until the value is decreased or lost. Second, on its offensive side, censorship helps us learn what the enemy is doing. Examination of mail and cablegrams often turns up vital information, not only about the enemy's battle or production plans, but about his reserves and his morale. This material is the pay-off of the whole censorship system.

The American people have endured censorship, in one form or another, in all of their wars. In the American Revolution itself, minority sentiment in a community invariably was suppressed. Andrew Jackson became a censor in the War of 1812. After his victory at New Orleans, he became enraged by a story in the *Louisiana Gazette* that he had received a certain official message. He insisted that editorial permission to print such news must come from him. Finally he imprisoned a writer who protested against the censorship, and forced from the city a judge who issued a writ of *habeas corpus* in behalf of the imprisoned writer.

Other cities also witnessed attacks on freedom of expression. In Baltimore, a mob wrecked the office of the *Federal American,* a newspaper which called the war unnecessary. After a month, the paper resumed publication, but one of its principals was killed by another mob.

The Civil War produced many similar incidents. Mobs forced several Northern papers to suspend because of their stand against the war, while others had to display the American flag in their windows. The War Department set up a censorship over telegraph lines, and in August, 1861, the Postmaster-General denied the mails to certain papers accused of being disloyal to the Union cause. His order stood for more than a year before it was rescinded.

Abraham Lincoln, when urged on one occasion to suppress the *Chicago Times,* protested against such a course and replied to the person advocating it: "I fear you do not fully comprehend the danger of abridging the liberties of the people. A government had better go to the very extreme of toleration than do aught that could be construed into an interference with or jeopardize in any degree the rights of the people."[2] General Burnside, however, later suppressed the paper in 1863 because of its "repeated expression of disloyal and incendiary sentiments." Lincoln had yielded in his viewpoint, but he had misgivings about Burnside's action and wrote to Secretary Stanton expressing the opinion that the suspension order should be revoked. A meeting of prominent Chicago citizens asked Lincoln to rescind the order, which also was denounced in a resolution by the state legislature. Heeding these expressions, the President authorized the *Times* to publish again.[3]

In the Spanish-American War, the public was not particularly aware of censorship. American newspapers with war correspondents in Cuba hired small boats to carry dispatches across the water to Florida. Censors were placed over the telegraph wires at Tampa, Miami, and Jacksonville, but they were lenient in handling copy. While American troops were in the Philippines, there were some newspaper criticisms, not of the military censorship itself, but of inequalities in its application.

Involvement in the World War in 1917 brought about the first American attempt at a widespread and thoroughly organized censorship. On April 13, 1917, a week after war was declared, the Secretaries of State, War, and Navy recommended to President Wilson the creation of a Committee on Public Information to exercise a voluntary censorship over the American press and give out governmental information about the progress of the war. The President appointed to the Committee these three cabinet members, under the chairmanship of George Creel.

Creel, a widely known editor and writer, set up an active and vigorous organization which came to affect the lives and thoughts of all Americans. He quickly issued to American newspaper men a pamphlet setting forth types of news which might hamper the war effort. On the cover was this quotation from President Wilson: "I can imagine no greater disservice to the country than to establish a system of censorship that would deny to the people of a free Republic like our own their indisputable right to criticize their own public officials. While exercising the great powers of the office I hold, I would regret, in a crisis like the one through which we are now passing, to lose the benefit of patriotic and intelligent criticism."[4]

---

[2] *Suppression of the Chicago Times.* Pamphlet.

[3] *Works,* Nicolay and Hay, Tandy edition, X, 108.

[4] Letter to Arthur Brisbane quoted in *Official Bulletin.* June 2, 1917.

Mr. Creel placed news in three categories: (1) dangerous news, which included stories of naval and military operations in progress, movements of Allied or American warships, phases of submarine warfare, and the like; (2) questionable news, such as sensational rumors, which should be published with great caution, and usually only with approval of the Committee on Public Information; and (3) routine news, which constituted the great bulk of information. Editors were invited to submit any articles about which they had doubts. An article approved by the Committee was stamped in one of two ways: "Passed by the Committee on Public Information," indicating that it could be published safely but not guaranteeing its accuracy, or "Authorized by the Committee on Public Information," showing that it had been investigated and officially approved.

Such work represented the negative, or censorship, side of the Creel Committee. Its greatest activity, however, was the positive or propaganda phase of distributing news and other material about the American war effort. The famous "Four Minute Men" spoke to theater audiences, clubs, and other public groups, urging their hearers to buy Liberty Bonds and War Savings Stamps. The movies were mobilized, a bureau of war photographs was established, special work was done with the foreign language groups and with labor unions. And as one of its major functions, the Committee took over the issuance of all Government news.

In the meantime, censorship of communications entering or leaving the country was developed by another committee. All wireless stations in the United States had been taken over by the Navy in 1914, and on April 28, 1917, cables and telegraph and telephone lines crossing the border were placed under jurisdiction of the Army and the Navy. The Trading with the Enemy Act and the Espionage Act, which empowered the Postmaster-General to refuse the mails to certain matter considered detrimental to military success, formed the basis for a Censorship Board, created by President Wilson in October, 1917. Serving on this Board were representatives of the Secretaries of War and Navy and of the Postmaster-General and the War Trade Board, along with Mr. Creel. This organization directed censorship of the foreign mails and cables. The Post Office Department paid the expenses and supplied a good share of the workers.

This postal censorship was a tremendous undertaking. The mails to be examined were those not already censored by the Allies—chiefly mails to and from Spain, Latin America, and the Orient.

Every agency represented on the Censorship Board was interested in obtaining special information for itself. The War Trade Board sought news of international commerce and possible economic aid to the enemy. Military Intelligence and Naval Intelligence wanted to learn whether information about military matters was being sent out of the country. By the end of the war, more than 250,000 persons had been at some time on a list of censorship suspects.

Such was censorship in the United States up to the present war. Many other countries had not fared so well. In the totalitarian nations especially, freedom of expression has long been a farce, even in peace-time. A dictatorship, in war or peace, must suppress even constructive criticism if it is to maintain its power. But in a modern democracy censorship takes on a quite different pattern.

Less than two weeks after the Japanese attack on Pearl Harbor, President Roosevelt established the Office of Censorship. Acting under the first War Powers Act just passed by Congress, he authorized the Director of Censorship to censor, "in his absolute discretion, communications by mail, cable, radio, or other means of transmission" between the United States and foreign countries. The President also created a Censorship Policy Board, with the Postmaster-General and other high government officials as members, to advise the Director of Censorship.

Also, the President issued a statement summarizing government objectives in the censorship program, and saying:

> "All Americans abhor censorship, just as they abhor war. But the experience of this and of all other nations has demonstrated that some degree of censorship is essential in war-time, and we are at war.
>
> "The important thing now is that such forms of censorship as are necessary shall be administered effectively and in harmony with the best interests of our free institutions.
>
> "It is necessary to the national security that military information which might be of aid to the enemy be scrupulously withheld at the source.
>
> "It is necessary that a watch be set upon our borders, so that no such information may reach the enemy, inadvertently or otherwise, through the medium of the mails, radio or cable transmission, or by any other means.
>
> "It is necessary that prohibitions against the domestic publication of some types of information, contained in long-existing statutes, be rigidly enforced.
>
> "Finally, the Government has called upon a patriotic press and radio to abstain voluntarily from the dissemination of detailed information of certain kinds, such as reports of the movements of vessels and troops. The response has indicated a universal desire to coöperate."[5]

---

[5] Statement to the press, Dec. 16, 1941.

This was the birthright and charter of the Office of Censorship; the arduous labor of setting up the necessary machinery in the crowded precincts of war-time Washington remained to be accomplished. Within a matter of weeks, however, all divisions were functioning. When the organization is completed, the Office of Censorship probably will have about 16,000 employees, all approved by the Civil Service Commission. Only a handful of the personnel is in Washington. The bulk is engaged in censoring mail at ports and border cities.

From a physical standpoint, the biggest job of the Office of Censorship is examining the millions of communications—letters, cablegrams, radiograms, and long distance telephone calls—which enter or leave the United States. When one considers that our boundaries stretch for 18,000 miles, one can understand the scope of that problem.

The difficulties are increased by the fact that since the first World War there has been a tremendous change in the nature and amount of international communications. The far greater use of the cable and the radiotelephone has been paralleled by the development of transocean air mail lines, and by a tremendous growth of communication of all kinds with Latin America.

To attack this situation, we did have from the beginning a nucleus of trained personnel. For two years, a group of officers in the Military and Naval Intelligence Services had been studying censorship problems, as a part of the general program of planning for a possible war. As a result, these officers were able to begin the actual censorship of foreign cables and mails within a few hours after the raid at Pearl Harbor. When the Office of Censorship was established, this Army and Navy personnel was transferred *in toto* to the new agency, and it carries on in complete independence of the War and Navy Departments.

Postal and cable censorship stations are now operating in the principal ports of the United States and its outlying territories. Through these stations pass letters and cablegrams bound to and from countries which are not occupied by the enemy. It is illegal to communicate with enemy territory, with two exceptions. First, communications of a restricted character can be sent under certain conditions to prisoners of war, and second, the American Red Cross will transmit short messages of a personal nature to relatives or friends in occupied lands.

Postal censorship naturally requires the closest coöperation with post office employees, who, somewhat reluctantly, I suspect, turn over sack after sack of mail to the censorship stations in or near the post office buildings. The censors take every precaution to keep the mail as secure and as private as possible, examining letters one at a time to prevent mix-ups.

Who are the censors doing this work? First, most of them are American citizens, and all are men and women of unquestioned loyalty to the United States. All take a brief training course to show their aptitude. Some are translators—our stations are prepared to handle communications in more than one hundred foreign languages. Others are specialists in various fields, such as business and finance, able to spot suspicious transactions of all types.

In general, the censors seek to stop any information which the enemy would like to have. Basically, that consists of defense matters, shipping data, weather conditions, and details of war production. Each letter presents a new and individual case that calls for the censor's best judgment.

One of several things may be done to letters which are not found acceptable. Sentences or paragraphs may be cut out with scissors; the entire letter may be suppressed; or it may merely be delayed until the information which it contains could no longer serve any dangerous purpose. Every letter passed by the censor is resealed with a slip of paper bearing the examiner's number, and then is placed once more in the mails.

It is the inevitable lot of censorship to be blamed for many things. Foreign mail is delayed in war-time by numerous causes, but principally by a general dislocation of shipping. Mail boats are few and far between; generally they are in a slow convoy, but the irate user of the mails lays all of his troubles at the door of the censor, although the actual truth is that the American censorship process seldom occupies more than twenty-four hours.

Censorship for cablegrams and radiograms is similar to the examination of the mails. Censors are stationed in cable offices and go over each message carefully. In peace-time, cablegrams often are so abbreviated, because of the cost, that only the sender and recipient can figure out the meaning. Obviously that would be dangerous in war-time. Therefore, the censor requires that the meaning of each cablegram be clear to him. A few widely known commercial codes are permitted.

Border censorship applies to everyone alike. The only exceptions relate to classes of mail and not to individuals. Official mail, including, of course, diplomatic mail, is exempt from examination. But the private mail of every individual is subject to censorship, whether or not he occupies an official position. We have found this the only practical method; if we should set up a "white list" of exempt individuals, thousands of Americans would find good reason why their names should be included, and the delay and extra expense to the Government arising from constant references to such a list would be tremendous.

To most individuals, this censorship represents little more than an annoyance, but to business men delays and deletions may be an extremely important matter. The Trading with the Enemy Act provides that Americans shall not do business, even indirectly, with enemy nationals. Therefore it becomes necessary for many corporations to apply for special licenses if they want to follow through on certain foreign transactions. These applications are refused whenever it is found that the enemy would profit.

At the same time, however, censorship tries to do everything possible to expedite legitimate foreign trade. To that end, we have set up a special system in coöperation with the Board of Economic Warfare by which technical and scientific publications can be licensed for mailing abroad. Similarly, we have arranged, in coöperation with the Bureau of Customs, to examine all photographic films entering or leaving the United States.

Other phases of border censorship need not be enumerated. Mention of one of these may provoke a smile, although actually it presents an important problem. It concerns carrier pigeons. There are literally millions of carrier pigeons in the United States, and many of them are almost unbelievably clever in their operations over wide areas. We must be certain that they are not used to carry messages from enemy agents in the United States to associates outside the country.

No law forms the basis of the voluntary censorship of the domestic press and radio. It is entirely coöperative, a patriotic contribution by editors and broadcasters to the national security. In my opinion, this is the heart of all our censorship work. What the enemy does not learn in the first place, he cannot sneak out of the United States.

Press censorship represents a major sacrifice by the publishing industry. And when I speak of the publishing industry, I do not mean newspapers alone, but magazines, books, house organs—everything which appears in printed form. The system does not represent "business as usual" on news desks, but neither does it mean a news or editorial black-out.

I should like to say parenthetically that the Office of Censorship does not prepare or issue news. It does not have a single press agent. Government information is not funneled through its staff. Instead, each federal department and agency continues to give out its own news under the coördination of the Office of War Information.

As assistant director in charge of the Press Censorship Division, we were fortunate in obtaining the services of Mr. N. R. Howard, editor of the *Cleveland News*. Associated with him are a half-dozen of the most capable and experienced managing editors in the country, also on leaves of absence.

Until the Office of Censorship was established, the War Department, the Navy, and other government agencies having a share in the defense program made requests of newspapers, asking them not to print certain types of information. The situation naturally caused confusion, because sometimes the requests overlapped or conflicted. The first job, therefore, was to codify all these restrictions. In consultation with interested government officials and an Advisory Council from the publishing industry, the Office of Censorship prepared and issued a Code of War-time Practices for the American Press.

This Code does not order papers to print or to withhold anything whatsoever. It lists the types of information which the Government feels should be omitted for the effective prosecution of the war, and asks the coöperation of the papers. Thus every editor, every copyreader, every reporter and writer, becomes his own censor. There are, of course, many border-line cases in which the editor or writer is doubtful, and these cases can be submitted to the Office of Censorship for prompt decision.

The news which the Press Code asks editors not to print falls into several classes. The first section deals with troops, for it is obvious that the enemy would like to know where we are placing our forces. We ask, therefore, that papers do not publish, except on the basis of official disclosure, news about the general character and movements of United States Army, Navy, or Marine Corps units—their location, identity, composition, equipment, or strength. An exception is made for news of home-town boys, provided military units in foreign service are not listed.

The next section of the Code concerns ships. We ask papers not to print the location, movements, or identity of naval and merchant vessels of the United States or the United Nations. We ask the omission of such details as the port and time of arrival or departure, the nature of cargoes, the existence of mine fields, etc., unless the Government, for sufficient reasons, makes the information available officially. The timing of war news is an important function which is best left in the hands of the Government. Thus the Navy sometimes withholds news of ship sinkings for several days. To do otherwise would amount to spotting the enemy's shots for him while his submarines still are on the target.

Restrictions also are placed on the disposition, movements, and strength of Army or Navy air units; the location of forts and other fortifications; the location of coast-defense emplacements and anti-aircraft guns; the location of bomb shelters; and the location of camouflaged objects. Provision is made for reporting air raids on the United States.

An important section of the Code concerns war production. Papers are not asked to withhold information which the public can easily acquire for itself, such as that a new factory is being built, but they are requested not to carry details such as the exact type of production, schedules, dates of delivery, or progress; estimated supplies of strategic and critical materials available; or nation-wide "round-ups" of procurement data except when this composite information is officially approved for publication.

Weather news may be of great importance to the enemy. Word of a storm in the Midwest may enable him to chart weather conditions over the Atlantic three or four days in advance. He can gauge his plans for submarine attacks and for possible air raids. We have asked papers to omit weather forecasts other than those officially issued by the Weather Bureau; and the Weather Bureau, of course, does not go into too many details.

These and a few other miscellaneous restrictions apply not only to news stories and magazine articles, but to advertising matter, letters to the editor, columns, and photographs. In other words, the Code covers anything that can be printed.

But the Code, of course, is no magic formula that always turns up the right answers. Its application often becomes a matter of personal judgment. One editor decides that he should not print a certain story. Another, equally patriotic, regards the Code as imposing no restriction on the same story. He goes ahead and prints it. His competitor naturally is annoyed, for his only reward is a clear conscience.

The Office of Censorship gets seventy-five to a hundred inquiries a day from newspapers and magazines, and naturally many complaints. Some of the questions can be answered by a quick "Yes" or "No" on the telephone; others may require consultation with technical experts. The censors do not pass on the accuracy of statements; they merely tell the editor whether the story would give information to the enemy. I suppose there always will be some confusion, some disappointments, in the operation of this voluntary system. But, all in all, editors are giving it their wholehearted support.

A code also was prepared for the domestic broadcasting industry, which has demonstrated equal patriotism in accepting voluntarily the restrictions laid down. In general, these restrictions parallel those in the Press Code. But in some respects they are much more stringent, because of the peculiar character of radio broadcasting.

We can stop a newspaper at the border if it contains objectionable matter, but we cannot stop a broadcast at the border, and many of our larger stations can be heard distinctly far out at sea and hundreds of miles to the north or south. Furthermore, radio transmission is instantaneous, whereas the dispatch of a newspaper abroad requires time, and a time lag always is important in censorship.

Quite aside from the question of news broadcasts, the fact that many radio stations can be heard outside the country raises other special problems. It is well known that enemy agents could, if permitted, use the microphone to transmit information by means of a prearranged code. For this reason, the Office of Censorship asked that certain poorly controlled quiz programs and the so-called "Man in the Street" programs be discontinued completely.

Of course this interdiction does not apply to that type of quiz program where the integrity of the participants is known in advance, or where the participants are selected at random from a studio or theater audience of several hundred persons. In such cases there is little likelihood that an enemy agent, by his own initiative, could gain access to the microphone. But there is a real danger in programs which take the microphone to a street corner and let any passerby who elbows his way through the crowd answer a few questions. The mere mention of a man's name, although sounding innocent to the broadcaster and the average listener, might be a special signal to another agent.

The only other type of program greatly affected has been the request program, in which the station played special musical selections at the request of listeners. It is evident that a request to play "Deep in the Heart of Texas," dedicated to Cousin Sarah, might easily be a signal to an enemy agent. Stations have been asked not to honor requests at specified times, but to play them at some future date not indicated in advance.

Foreign language broadcasts are carefully checked, but we have not acceded to proposals from some quarters that all foreign language programs be discontinued. There is no question that these programs and the foreign language press reach many good American citizens who could not be reached in any other way with news of the war effort and appeals to buy war bonds. All the stations broadcasting in foreign languages are owned by American citizens and, of course, are operated under government license.

From this outline it becomes apparent that American editors and broadcasters really are their own censors. It is a heartening example of democracy at work. In no other nation is radio operating under so liberal a program. In no other nation does the press retain so much of its peace-time freedom; there is no censorship of opinion, providing, of course, that statements are not seditious.

Thomas Jefferson wrote in 1787: "The people are the only censors of their governors; and even their errors will tend to keep these to the true principles of their institutions. To punish these errors too severely would be to suppress the only safeguard of the public liberty. The way to prevent these irregular interpositions of the people is to give them full information of their affairs through the channel of the public papers, and to contrive that those papers should penetrate the whole mass of the people."[6]

Jefferson's words apply today. The Government has an important duty in making certain that, although military information must of course be censored, the people receive all possible news about the war and the Government's program to achieve victory.

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[6] Letter to Edward Carrington from Paris, Jan. 16, 1787.

Only in a dictatorship can the people be kept in ignorance. The first step in understanding our problems is to know what they are. Then an enlightened public becomes an intelligent public, which can put forth all its energy and zeal in the prosecution of the war.

Although censorship obviously never can be welcome, there are some precepts which can make it equitable and give the public a degree of confidence in its administration: (1) Censorship is a war measure. It is justifiable only in so far as it aids prosecution of the war. (2) Censorship is no respecter of persons. No one is exempt. But censorship does respect the mails and the cables. (3) Censorship is frank with the public. Rules and the reasons for them are published, for prevention in censorship is much better than cure. (4) The best censorship, if any censorship can be so called, is one of facts rather than of opinion. The key to suppressing information is whether it would help the enemy.

It has been said with great truth that no man actually is wise enough or good enough to be a censor. That is why it is important that censorship be put in charge of men who believe with all their heart and mind in everything that censorship is not—freedom of speech, freedom of the press, and all the other liberties inherent in democracy itself. For the good of his soul, it would be well for every censor to keep framed upon his walls and constantly before his eyes this dictum of Owen Tweedy: "A censor needs the eye of a hawk, the memory of an elephant, the nose of a bloodhound, the heart of a lion, the vigilance of an owl, the voice of a dove, the sagacity of Solomon, the patience of Job, and the imperturbability of the Sphinx."

WAR-TIME GOVERNMENT IN CHINA[1]

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I

Since the establishment of the Nationalist régime in Canton in the year 1925 by the Kuomintang, the government of China has undergone only one major structural change. At the beginning, aside from the machinery which assured control of the government by the Kuomintang, the one organ of political power was the State Council, under which functioned the various departments of administration, civil and military, of law-making and of adjudication. The State Council was a going concern, and the various departments were subordinate organs. In October, 1929, there occurred a change. The Five Yuan were set up, each responsible to the Party machinery and each functioning independently. The State Council was retained, but, except for a brief interval, it no longer enjoyed substantial power.

The government of China, as it stood at the beginning of the war, was very much the government as set up in 1929, though necessarily with many important modifications. Supreme power rested with the Central Political Committee, which was a committee of the Central Executive Committee of the Kuomintang, charged with the direction and supervision of the government. It was not to be confused with the Central Executive Committee itself. While the Central Executive Committee met only at very long intervals, usually once or twice a year, and, being a large body of 300-odd persons, did little more than hear speeches and reports and pass resolutions, the Central Political Committee was a going concern and met every week to decide on important matters of state. It generally comprised all the important members of the Party and the Government, thus facilitating its assumption of power. At times when its membership was too large, as a result of the members of the Central Executive and Control Committees claiming the right to be present at all its meetings, power sometimes passed either to its presidium or to its Committee on National

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[1] Dates, citations, and references are not given in this article. They can generally be found in Wang (Shih-chien) and Chien (Tuan-sheng), *Comparative Constitutional Law*, Bk. VI, Chap. 4. A third and revised edition of this treatise was published by the Commercial Press in July.

Defense, which would naturally be a much smaller body than the Central Political Committee itself.

At the apex of the government, which since 1929 was officially styled "the National Government of the Republic of China," stood the State Council. In theory, it was the highest organ of government, but, consisting of some thirty persons who were mostly either no longer active in politics or otherwise out of power, it in practice wielded no power whatever and had no peculiar function of its own.

The chairman of the National Government was head of the state and chairman of the State Council, whenever the Council met. As chairman of the State Council, his duties were light. As head of the state, he had naturally many formal functions which commonly pertain to the head of a state.

Under the State Council stood the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Control Yuan, and the Examination Yuan—five yuan in all, as was prescribed by Dr. Sun Yat-sen in his teachings. The theory of separation of powers was well-known to Dr. Sun, but with the three established powers he also listed the examination and control powers. He wanted to see examination power independent of the executive power, as he held the old Chinese institution of scholastic examinations in veneration. He took the power of control away from the legislative department, as he seems to have been struck by the tyranny of parliaments, especially the Chambers of the Third Republic. So constituted, none of the five yuan could ever attain the height that is the British Parliament's, for instance. This is natural in view of the fact that in the complete scheme of his so-called "Five-Power Constitution," there is to be a people's congress in control of all the yuan. As there was as yet no such congress, any yuan in the hands of a strong man was in a position to overshadow all the other yuan, as was not infrequently done.

If the five-yuan system followed the premeditated teachings of Dr. Sun, the set-up of an independent Military Commission was occasioned by the exigencies of the time. Both during the days of the Northern Campaign (to destroy the militarist régime at Peking) and after Japan invaded Manchuria, it was considered necessary to establish a Military Commission which could unite in its hands all the military functions and be under a man of the highest military prestige. There was, of course, no theoretical obstacle to subordinating the Commission to the Executive Yuan. But the head of the Commission might be a man of greater prestige than the head of the Executive Yuan, and it might not be possible for the Executive Yuan to control the Commission. Hence ever since its inception, the Military Commission had always enjoyed a position of eminence, independent of the Executive Yuan. Even at the start of the war in 1937, when General Chiang Kai-shek was concurrently president of the Military Commission and president of the Executive Yuan, the two offices were not amalgamated and the Commission remained on an equal footing with the Executive Yuan.

There was yet another office which also exercised an important function. The advocates of the five-power system think that to entrust the Executive Yuan or its Ministry of Finance with the preparation of the budget would so greatly increase the power of the Executive Yuan as to make a proper balance of powers impossible. So they insisted on setting up an independent office which should be in charge of the functions of preparing the budget and of supervising its execution, and in 1931 the so-called office of the Comptroller-General was set up and placed directly under the State Council. To it the functions of collecting statistics and keeping accounts also belonged.

Were the foregoing all the principal organs of government, their interplay would already present a picture of great complications. But they were not all. There were Kuomintang organs as well, which in no negligible degree performed governmental functions also. Theoretically, except the Central Political Committee stated above, Party organs perform only party functions; but in truth many such organs went far afield into the realm of government and administration. The Standing Committee of the Central Executive Committee met as frequently as once a week, and there not infrequently policies of government were discussed and decided upon. If it encroached upon the proper authority of the Central Political Committee, the latter was in no position to complain. Also under the general supervision of the Standing Committee, the Central Executive Committee had subordinate to it many departments, such as the Departments of Organization, of Public Information, of Social Affairs, etc. Some of these departments, especially the Department of Public Information and the Commission on Training, were in fact administrative departments of no mean proportions. But, being Party departments, they were of course not subject to the control of the Executive Yuan.

The exercise of government functions, within such a frame, naturally could not be very simple. Both the All-Nation Congress and the Central Executive Committee of the Kuomintang were policy-making organs. That was obvious enough. Within the frame of government, policy-making power was lodged in the hands of the Central Political Committee. Neither legislation nor administration nor any other function could be outside the jurisdiction of that Committee. Legislation could be initiated by the Central Political Committee, by the State Council, by any of the five yuan other than the Legislative Yuan, or by members of the Legislative Yuan; but by whomsoever initiated, the bill must first be submitted to the Central Political Committee for consideration of the legislative principles therein embodied, unless the Committee waived that right in favor of the Legislative Yuan. Though on many occasions the Committee did waive the right, its preëminence as a legislative organ was never impaired, since it had the right to order the Legislative Yuan to reconsider the bills the latter might have passed.

In matters of administration, the control of the Central Political Committee was in practice perhaps less rigid. Whereas it had a voice in all enacted bills, it naturally could not go into every act of administration. Important matters of administration should in theory be referred to it for consideration. But there is no precise demarcation between matters which are important and matters which are not important. Hence if the president of the Executive Yuan happened to be the strongest leader of the Party, he could always enjoy a certain degree of freedom. It was only when the president was not as strong as some other leader or leaders of the Central Political Committee that the Committee came to exercise a minute control over administration.

The making of a budget illustrated most aptly the power of the Central Political Committee. Estimates were naturally prepared by the various spending departments and the Ministry of Finance and were compiled into one book of estimates by the Office of the Comptroller-General. But before they were considered either by the Executive Yuan or the Legislative Yuan, they must be laid before the Central Political Committee for general scrutiny. It was there that expenditures were drastically cut down and means of making up the deficits were discussed. The function of the Executive Yuan was little more than apportioning the appropriated sums to the various services, and that of the Legislative Yuan little more than formally enacting the budget.

Administration was further complicated by the existence of the Military Commission and administrative departments of the Party. In military matters, both the Executive Yuan and the Military Commission claimed control. The latter, being independent of the former, was considered the highest military organ. But the Ministry of War was an integral part of the Executive Yuan. Through the Ministry, the Executive Yuan was able to exercise some control over military affairs. Therefore when the Yuan and the Commission were headed by one person, the Yuan was able to know much of the affairs military. But when they were headed by two different persons, the Yuan must give place to the Commission, as far as military administration was concerned. The position of the Military Commision *vis-à-vis* the Central Political Committee in matters of defense, then, very much resembled that of the Executive Yuan *vis-à-vis* the Central Political Committee in matters of administration.

Matters like censorship might fall within the competence of either the Department of Public Information of the Party or the Ministry of Interior of the Executive Yuan. In case of either positive or negative conflict, the issue had to be settled by the Standing Committee of the Central Executive Committee.

The judicial function and the functions of examination and control were supposed to be exercised independently, and the Central Political Committee should have no control over them. But that did not mean that they were entirely free from its control. The organization of the Judicial, Examination, and Control Yuan and their principal departments were determined by the Central Political Committee, and the important appointments were confirmed by it as well.

II

The war brought to the fore many problems of readjustment and reorganization, as war in any country will. There is, however, this great difference. In either a fully democratic or a fully dictatorial country, the most important demand would naturally be to strengthen the executive arm, with or without accompanying demand for the simplification of the law-making process. But in

China, which had maintained a peculiar régime of party dictatorship, dedicated to democracy, the endorsement by the whole nation of a war to resist aggression led instead to the demand for a more democratic form of government.

There were many groups outside of the Kuomintang which for years had been demanding participation in the government. Among the organized groups, the Chinese Communist party was the best known. It had for two or three years past been making the creation of a popular front its cardinal policy. But democracy was not the catchword of the Communists alone. Other groups, and a large number of intellectuals who were not in any way affiliated with any party or group, have also been demanding democracy. When the war broke out, it was no longer possible for the Kuomintang entirely to ignore such demands. An organization called the Advisory Council of National Defense was consequently speedily set up, to give advice to the Supreme Council of National Defense, which had then just assumed the functions of the Central Political Committee. It was a small body, consisting at first of only seventeen persons, and when it was superseded by the People's Political Council, almost a year later, it had no more than twenty-three members. In it were representatives of the Communist, the Youth, and the Nationalist Socialist parties, of the so-called Third Party, and of the Patriotic Federation, and also outstanding liberal independents like Hu Shih. As the mouthpiece of all the groups, organized or unorganized, outside the Kuomintang, it exerted considerable influence on the government, though constitutional power or power of compulsion was denied it. It met often, usually once a week, and its deliberations were facilitated by being presided over by the president of the Supreme Council of National Defense himself.

Thus began a series of partial attempts at transforming the Chinese polity into a democracy. The Advisory Council of National Defense led to the establishment of the People's Political Council, and the latter to that of the provincial and district political councils.

The People's Political Council was a direct outgrowth of the Advisory Council of National Defense. The Advisory Council held its first meeting on August 17, 1937. At the end of 1937, the Supreme Council of National Defense passed a resolution to have the Advisory Council expanded to seventy-five members. Before this could be realized, opinion was, however, gathering strength that something more akin to a representative body was needed. In conformity with this opinion, the Extraordinary All-Nation Congress of the Kuomintang, in March, 1938, passed a resolution declaring for the convening of a People's Political Council.

The People's Political Council was first convoked on July 6, 1938. It had then 200 members, divided into four categories: (A) eighty representing the provinces and special municipalities, nominated jointly by the government and the Kuomintang executive committees of the provinces and municipalities; (B) six representing Mongolia and Tibet, nominated by the Commission on Mongolian and Tibetan Affairs; (C) six representing the Overseas Chinese, nominated by the Commission on Overseas Affairs; and (D) one hundred representing cultural and economic bodies and also political activities, nominated directly by the Supreme Council of National Defense. The numbers nominated were to be twice as many as numbers apportioned; final choice rested with the Supreme Council of National Defense.

When the term of the First People's Political Council expired in 1940, membership was enlarged by forty and the manner of appointment modified, increasing the number in the first group by two and in the fourth by thirty-eight, and requiring representatives from those provinces and municipalities where provisional political councils had already been established to be elected by those councils. Since by 1940 provisional political councils were in existence in a majority of the provinces and municipalities, most of the first group ceased to be purely nominated members. The percentage of the elected members will be further increased in the Third People's Political Council, for, according to its new Organic Law of March 16, 1942, when it convenes in the fall of 1942, out of a total of 240 members, the first group will have 164, all of whom will be elected by the provisional political councils of the provinces and municipalities, except in those few where occupation by the enemy is rather effective, such as the Northeastern provinces, Hopei, Peiping, Tientsin, and a few others.

It thus can readily be seen that while the People's Political Council cannot claim fully to represent the people, there has been a consistent effort to make it more truly representative. It is true that category D of appointed members, though greatly reduced in number—sixty in the Third People's Political Council—is still retained. But harsh criticism of that feature is not warranted. In his last years, Dr. Sun Yat-sen was very insistent in his advocacy of functional representation to make up for the deficiencies of geographical representation. Functional representation is no longer a panacea as it was in the early 'twenties, but it is only natural not to expect the Kuomintang to give it up. Furthermore, the experience with the first two People's Political Councils shows that appointed members are not, thanks to the Chinese genius for appeasing the opposition, incompatible with pliancy. In fact, category D has always included some of the most outspoken critics of the government, as well as some of the most outstanding leaders of China, again outside the Kuomintang.

Of the quality of members, it may be said that on the whole they have been on a high level and perhaps as good a lot as a purely elected body can show in China at present. The Supreme Council of National Defense, or its successor, the Supreme Committee of National Defense, has seen fit to provide the People's Political Council with a majority of Kuomintang members. But this is only natural, and no sane observer of Chinese politics will ever suppose that in a freely contested national election the Kuomintang would be reduced to a minority. The sagacity of the Supreme Council or the Supreme Committee does not lie in getting a majority of Kuomintang members elected or nominated, but rather in seeing that the various other parties and interests are represented in, and prominent non-Kuomintang leaders appointed or elected to, the People's Political Council. True, the Communist party has complained that it had no more than seven members in both the First and the Second Kuomintang; but such complaint is confined to that party alone and not shared by others. And for that matter, murmurs are heard among the rank and file of the Kuomintang because it, too, does not enjoy an ampler representation.

The powers of the People's Political Council have remained largely unaltered for all these years. The Council can both make proposals to the Government and question the Government about anything done or to be done. The Government is obliged both to make reports to the Council on important measures taken and to lay before it the important measures to be taken. *A priori*, this should enable the Council to have much voice in the affairs of the Government. But owing first to the proviso that in case of emergency the Supreme Council (or Committee) of National Defense may dispense with the obligation of securing the previous approval of the People's Political Council for any measure to be taken, and second to the lack of any specification as to what constitutes an "important" measure, the Government is free either to lay or not to lay before the People's Political Council any measure to be taken, either to report or not to report any measure that has been taken. As to the proposing power of the Council, it is limited by the fact that the Supreme Council (or Committee) of National Defense is not obliged to adopt the proposals. The questioning power is therefore perhaps the most effective weapon at the disposal of the People's Political Council. Though there is no means of compelling a minister to answer a question or to disclose a secret, no minister can quite be free from the anxieties of a searching question from the floor of the Council. In this way, the Council contributes no little to making the Government more responsible to the wishes of the country.

If the People's Political Council is to exercise its functions effectively, it perhaps should meet more often than hitherto. At the beginning, the Council was required to meet every three months; but since 1939, the statutory requirement has been only a semi-annual session. In reality, owing to the long intervals required to renew the successive Councils, there have been, in all, only seven sessions, five of the First Council and two of the Second. The session itself is also extremely short, only ten days, which of course is sufficient neither for deliberation on measures to be proposed nor for scrutiny of measures taken or to be taken by the Government. The Government has the right either to call an extra session or to prolong a regular session beyond the statutory duration, but it does not view the exercise of that power with any satisfaction, and has never exercised it. Between sessions, there is also a Recess Committee of twenty-five, elected by the People's Political Council and meeting every other week. But the general rule that a committee charged with looking after the general interests of the whole body and not charged with any more specific function is often a committee without power, holds true in this case. Hence the existence of a Recess Committee does not make up for the infrequency of the sessions of the People's Political Council itself.

To pass any definitive judgment on the People's Political Council is not easy. It would be extravagant to claim that in it Chinese democracy has found anchor, or even to claim that through it

China has made a long stride along the road to democracy. But if the function of a democratic assembly is to voice the opinion of the people and to make the government feel obliged to respect that opinion, the People's Political Council is not to be dismissed as a nonentity merely because it is not a fully elected assembly or because it has yet to acquire the power of compulsion.

As a corollary to the People's Political Council, both the provinces and the districts below are to have political councils. In most of the provinces, district political councils will be established by the end of 1942, and they will be elected by the congresses of urban and rural communities and by the professional bodies of the district, the latter not to elect more than thirty per cent of the members. The provincial political councils are to be elected by the district councils. The elections are, therefore, very indirect; but it is nevertheless a proper beginning of the exercise of the electoral right. Pending the establishment of definitive provincial political councils, there have been provisional provincial political councils, made up of persons chosen by the Supreme Council (or Committee) of National Defense on nomination of the district governments and district executive committees of the Kuomintang and also professional bodies of each province, the nominations being very much like those in connection with the People's Political Council. In this respect, special municipalities are treated like the provinces.

The political councils of the provinces and districts are given similar powers, and enjoy a similar status, in the provinces and districts to the People's Political Council in the nation. Actual functioning varies, of course. The usefulness of a provincial provisional political council depends naturally on the caliber of the men who compose it and the attitude of the provincial government toward the council, which is no part of the government.

Besides setting up the various political councils, there has been a demand for establishing a contitutional régime and transforming the government by the Kuomintang into a government by the people. This is no new demand. Before the war began, people had insisted upon it, and the Kuomintang, following the teachings of Dr. Sun, its founder, had promised it. In fact, a draft constitution was completed and formally proclaimed by the Government on May 5, 1936, and election of the National Congress was proceeding when the war broke out. If there had been no war, the Congress was to have met on November 12, 1937. Repeated demands for constitutionalism raised by the groups in the People's Political Council actually prompted the Kuomintang, through the Central Executive Committee, in November, 1939, to declare for the completion of the election of the delegates to the Congress and for the convening of the Congress on November 12, 1940. The elections held before the outbreak of the war were, as was to be expected, strictly managed by the Kuomintang; and the delegates chosen were mostly partisans of the Kuomintang. The constitution made, and the new government organized, by such a Congress naturally would not meet the wishes of the other parties. But the Kuomintang could not do otherwise. It could not be persuaded to concede too much to its opponents. Seeing that the new decision to convoke the National Constitutional Congress would do little to satisfy the demand for constitutionalism of the other parties, it rescinded it and deferred the convening of the Constitutional Congress until after the conclusion of the war, thus terminating, perhaps once for all, the controversy over establishing constitutionalism during the war.

III

In so far as the government proper is concerned, there have been surprisingly few changes—surprisingly, because the war has been both very long and of a tremendous magnitude. The pre-war framework of the State Council superimposed upon the Five Yuan, with the Military Commission assuming an equal position, has remained unaltered. It is true that for a time, immediately after the war began, there was a movement to disengage a large part of the personnel of the government and to allow the non-essential organs to fall into desuetude. Thus the Legislative Yuan was practically a dead agency between July, 1937, and April, 1938, and legislation was by action of the Supreme Council of National Defense alone, without the concurrence of the Yuan. The Examination Yuan was also dormant for over a year. The Control Yuan, which has no day-to-day functions to perform, was virtually dead for even a longer period. But, one after another all were resurrected, and by the early months of 1939, the Five Yuan had been restored to their pre-war basis. The State Council itself has scarcely met since the war began; but that, too, can hardly be considered a change, since the Council has no definite duties assigned to it, and even during the years immediately preceding the war its meetings had become rarer and rarer.

The most serious attempt at overhauling the machinery of government to meet the exigencies of the war was when the Standing Committee of the Central Executive Committee of the Kuomintang resolved to proclaim the Articles of Organization of the General Headquarters, decided upon previously by the Central Political Committee, and to authorize the president of the Military Commission to function as the Generalissimo of the Armed Forces. There was then mooted the question of having the General Headquarters supersede all other organs of government and bringing all the indispensable departments of administration within the framework of the General Headquarters, retaining only the chairmanship of the National Government and also the Supreme Council of National Defénse, which was then taking the place of the Central Political Committee. If this broad proposal had been realized, there would have been nothing short of a complete overhauling of the system then prevailing. It was, however, dropped almost as speedily as it was made. Even the proclaimed Articles of Organization for the General Headquarters was not put into actual operation. The only thing left of the whole ambitious scheme was that General Chiang Kai-shek, president of the Military Commission, became Generalissimo *de jure* as well as *de facto* by the authorization of August 27.

In lieu of organizing an all-absorbing and all-powerful General Headquarters, the Military Commission was very extensively expanded and strengthened. Before the war, it had as its subordinate offices nothing but minor ones necessary to its proper functioning. The great military departments, such as the General Staff, the Inspectorate-General, and the Military Advisory Council, although under its supervision, were separate organizations, and the Ministry of War was one of the ministries of the Executive Yuan. But in August and September of 1937 there were caused to be organized seven great departments of administration, namely, those of Political Affairs, Military Operations, Heavy Industries, Light Industries, Public Information, Political Works (attached to the Armed Forces), and Transport—all directly under the Commission. These were known as First Department, Second Department, etc. As the ministries of the Executive Yuan, the departments of the Central Executive Committee, and some other independent administrative offices were left largely untouched, confusion and duplication of authorities became unavoidable. For instance, the new Department of Heavy and Light Industries and the Ministry of Industry of the Executive Yuan had virtually identical functions, while the Ministries of Railways and of Communications of the Executive Yuan performed more or less the same duties as those falling to the new Department of Transport. The arrangement was obviously unsatisfactory and further reorganization necessary.

A reorganization of January, 1938, was more rational, if less radical. The seven departments now gave way to the four departments of Military Operations, Military Administration, Military Training, and Political Works. The three great independent military establishments were brought directly under the Commission, the General Staff becoming the Department of Military Operations, and the Inspectorate-General that of Military Training, with the Military Advisory Council retaining its old nomenclature. But functions which are not strictly military were left in the hands of either ministries of the Executive Yuan or departments of the Central Executive Committee. The Department of Military Administration remains a dual organization, being also the Ministry of War of the Executive Yuan.

The reorganization described was of course not final. Later there have been many minor changes, adding this or transferring that to the Military Commission. But no attempt has been made to eclipse the Executive Yuan. As it now stands, the Military Commission has directly under it, besides the four Departments and the Military Advisory Council above-mentioned, the General Office (under a chief), the Naval Office (under a commander-in chief), the Air Office (under a commission with the Generalissimo himself as chairman), the Office of Transport-Control (under a chief), the Office of Military Servicing (under a chief), the Office of the Judge Advocate-General, the Personnel Office (under a chief), the Commission on Military Pensions, the Commission of Control, the Commission on Party and Political Affairs in War Areas, and finally the Liaison Bureau. All the Commands are, of course, also under the Military Commission. It will thus be seen that the Commission, though a vast organization, has its functions largely confined to things military. The most doubtful case is the Office of Transport-Control, which has taken over the management of highways, as well as the power of fixing priorities of transportation, from the Ministry of Communications.

There is yet another point in the reorganization of 1938 which requires mention. Before the war, the Military Commission was indeed a commission. As such, it was collegiate, and a meeting must be called when important matters of national defense (other than actual military operations, of which the President was by law to be in sole charge) were to be decided upon. But this was in theory only. The prestige of the then incumbent president, General Chiang Kai-shek, was such that power had long fallen into his hands, and the other members of the Commission were of little consequence. The conferring of the powers of Generalissimo on the President in August, 1937, caused the discrepancy between law and practice to disappear. The law was now also altered to make the President head of the Commission and other members merely assistants. The law also made the Chief of General Staff and the Deputy Chief who, together with the heads of the four Departments and the president of the Military Advisory Council, are *ex officio* members of the Commission, principal assistants of the President and empowered them to exercise general supervision over all of the departments, offices, commissions, and bureaus of the Commission. They thus out-rank other members of the Commission, though in practice they may not be able to exercise supervision except through the person of the Generalissimo.

The idea of setting up a General Headquarters, and also that of having a super-Military Commission dropped, there was naturally a necessity so to reorganize the Executive Yuan as to enable it to meet the requirements of the war; and in January, 1938, this Yuan was overhauled simultaneously with the Military Commission. Before the war, there were under the Yuan nine ministries (Interior, Foreign Affairs, War, Navy, Finance, Industry, Education, Communications, and Railways) and two commissions (Mongolian and Tibetan Affairs and Overseas Affairs). The Ministry of Navy was changed into the Naval Office and transferred to the Military Commission; the Ministry of Industry, together with some minor offices, were reorganized into a new Ministry of Economics; and the Ministry of Railways was merged into that of Communications —thus reducing the number of ministries from nine to seven. The change was dictated by considerations of both efficiency and economy. But subsequent changes have not been invariably in the interest of either, still less of both. In 1940, two new ministries were added. A Ministry of Agriculture was split from the Ministry of Economics, although there was little actual need for so doing. The Ministry of Social Affairs, so-called, was previously a department of the Central Executive Committee; with the transfer, there was much uncalled-for expansion. In 1941, there was added the Ministry of Food, necessitated by the acute problem of the rising price of grain and even shortage of rice. The raising of a relief organization to the status of an Executive Yuan Commission was also justified by the scale of work to be done. The organization of a Commission on Conservancy was a wise step, as it brought under its control a number of river boards. But, strange to observe, the Ministry of Trade ordered in March, 1941, to be set up by the Central Executive Committee to conduct the economic warfare has never been organized.

From the foregoing, it will readily be seen that in bold relief the war-time administration differs but little from the pre-war administration. True, the Military Commission has been much expanded, and the Executive Yuan has also undergone changes. But there have been few innovations altering either the character of any of the existing organs of government, be it the Military Commission, the Executive or any other Yuan, or the State Council itself, or the relationship between these organs. Whether this is because changes in the administrative system are not needed or are of little consequence, can best be answered by reference to the changed status of the Central Political Committee.

IV

We have said that the government of China is government by the Kuomintang, and that the Kuomintang used to control the government through the instrumentality of its Central Political Committee. It is in this agency that important changes have taken place, and generally to make it better suited for directing the war.

The Central Political Committee was itself fairly large, and when the war broke out, all members and reserve members of the Central Executive and Control Committees had a right to attend its meetings. This made it both unwieldy and unsuited to the conducting of war. On August 11, 1937, the expedient of a Supreme Council of National Defense was resorted to. This was no new thing entirely. In the days before the war, from 1933 to 1935, when the situation in North China, due to Japan's continuous aggression, was most tense, the Central Political Council (predecessor of the Committee) had made use of a small Committee on National Defense to consider and decide on weighty measures, in place of the plenary Council. When the Central Political Council was reorganized into the Central Political Committee at the end of 1935, membership was limited to twenty-five, and for a short while it was thought that the Committee could discharge all of its functions without again resorting to the device of a small Committee on National Defense. Unfortunately, the ranks of the Central Political Committee were soon swollen by the attendance of other members and reserve members of the Central Executive and Control Committees, not members of the Political Committee. At the beginning of 1937, by resolution of both the Central Political Committee itself and the Central Executive Committee, the Committee on National Defense was revived, again as a committee of the Central Political Committee. The new Supreme Council of National Defense was, on the contrary, a substitute for, and in authority equal to, the Central Political Committee. It had as its chairman the chairman of the Committee on National Defense, General Chiang Kai-shek, and as its vice-chairman the chairman of the Central Political Committee, Mr. Wang Ching-wei, who later stooped to be a Quisling. As soon as the Supreme Council was set up, the Central Political Committee virtually ceased to function, and between August 11 and November 13, when the Supreme Council resolved to suspend its powers, it held only two meetings. The resolution of November 13, of course, killed the Central Political Committee—at least for the duration of the war. A legally-minded person might indeed question the validity of a resolution passed to suppress a body which had created the body passing the resolution. But China was then at her most critical moment, and few were interested in legal niceties. The fact that the men in control of the Supreme Council were also in control of the defunct Committee was enough to warrant the temporary demise of the Committee.

The Supreme Council of National Defense was a smaller body than the Central Political Committee—which was the chief, if not the only, reason for its supplanting the Committee. By the Articles of Organization, it enjoyed emergency power of legislation not enjoyed by the Committee. Otherwise there was little difference between the two. The various committees which served the Committee also served the Council. The relation between the Council on the one hand and the Kuomintang and government departments on the other also more or less remained the same.

As time went on, it was found that the powers enjoyed by the Supreme Council were not enough, and that the procedure by which the Council exercised them was not direct and flexible enough to meet the needs of the war. In February, 1939, the Central Executive Committee, in a plenary session, sought to improve the situation by ordering the organization of a Supreme Committee of National Defense to take the place of the Council.

The Supreme Committee differs from the Supreme Council in several important respects. In the first place, power is more centralized in the hands of its president (who is, by the Articles of Organization, no other than the head of the Kuomintang himself, General Chiang Kai-shek) than in the hands of the chairman of the Supreme Council. In the second place, whereas the authority of the Council extended only to the departments of government, the Committee has authority over the departments of the Central Executive Committee as well. In the third place, whereas the Council could deal only with the Five Yuan and the Military Commission, the Committee can also issue orders to their subordinate departments. For this purpose, all the ministers, the heads of departments, and other principal administrators, wherever they belong, are made so-called "executive members" of the Committee, while other members share in making the orders.

The Supreme Committee is by no means a small body. It includes the members of the standing committees of the Central Executive and Control Committees, the presidents and vice-presidents of the Five Yuan, members of the Military Commission, and other members nominated by the president of the Supreme Committee with the consent of the Standing Committee of the Central Executive Committee. Allowing for duplicates, total membership is not likely to be below twenty-five. Out of these, the President designates eleven to constitute the Standing Committee. This is naturally a much smaller body than the plenum, which is attended not only by all regular members but by executive members as well. It is this Standing Committee which holds weekly meetings and transacts the ordinary business. The plenum seldom meets. But lately, even the meetings of the Standing Committee have also a tendency to be swollen by attendance of those who are invited to be present. For instance, some of the more important ministers of the Executive Yuan, and also the chairmen of the more important committees of the Central Political Committee, are often present.

With the establishment of the Supreme Committee of National Defense, policy-making and initiation and formulation of important measures have largely been centered in its hands. The Standing Committee of the Central Executive Committee still meets weekly, but its deliberations are now strictly confined to matters of party administration. It seldom goes out of its field to interfere with matters of state. In case of conflicting jurisdiction between Party and Government, it is generally the Supreme Committee that decides, thus avoiding overlapping or contradiction. The Executive Yuan, too, has its weekly meetings; but it also takes orders from the Supreme Committee. It may still propose important measures, but these must first be submitted to the Committee before they can be acted upon. In pre-war days, there might have been cases of the Executive Yuan forcing the hands of the Central Political Committee. That is not done now. The Military Commission is not so much concerned with policy as is the Executive Yuan. But if a measure involving policy is to be determined, it, too, honors the authority of the Supreme Committee.

As to the process of legislation, substituting the Supreme Committee of National Defense for the Central Political Committee, it is largely the same as before the war. There is, however, this difference: in case of emergency, the Supreme Committee is empowered to order the proclamation of a law without it first being enacted by the Legislative Yuan.

Proposals made by the People's Political Council are also acted upon by the Supreme Committee of National Defense. The Committee may order the yuan or department concerned to formulate the proposals into laws or orders, or may simply drop them. In other words, though the Supreme Committee is not by law above the People's Political Council, it in fact enjoys a superior authority over it, as it does over all departments, both of the Party and of the State.

The Supreme Committee of National Defense has under it several very important organizations. There is the Secretariat, which, like all secretariats in the Kuomintang and in the government, does a good deal of real work; and the Secretary-General has always been a member of the Standing Committee. There are five committees of the Central Political Committee on Law, Finance, Economics, Foreign Affairs, and Education. They serve the Supreme Committee in the same way as they served the Central Political Committee. There are also the Planning Commission and the Control Commission, both set up toward the end of 1940. The Planning Commission is headed by the president of the Supreme Committee himself, and the Control Commission (not to be confused with the Central Control Committee of the Kuomintang) is subdivided into two sections in charge of Party and Government affairs, respectively. The idea was to have the Planning Commission plan, the Government and Party administration execute, and the Control Commission check up on whether execution is in accordance with the plan. It can, of course, not be supposed that in a country where statistical data are either lacking or not always reliable—where administrative machinery is defective, and where war has done so much to disturb the normal situation—a scheme as ambitious as this can be put into operation, let alone successful operation. In fact, thus far the Planning Commission has trodden the path of planning cautiously, if not timidly. It has concerned itself only with a detailed scanning of the annual budgets. Even at that, it has never seen fit to go too deeply into the matter.

The key official in the Supreme Committee of National Defense, as well as in the entire Chinese political organization, is, it must be emphasized, the President. Organically, the President of the Committee and the Head of the Kuomintang are one and the same person. The Kuomintang has had no head since the death of Dr. Sun Yat-sen in 1925. Repeated attempts to make someone its head were doomed to failure, the reason being largely the coëxistence of several leaders who could lay claim to that exalted position one as well as another. But when the war came, one of these had already died and the prestige of General Chiang Kai-shek had grown to such heights that no one could dispute his leadership. The necessities of the war also made the restoration of the institution inevitable. So, at the Extraordinary All-Nation Congress, in March, 1938, General Chiang was elected Head of the Kuomintang. As such, he is, of course, entitled to direct any party organization in existence or that may be created. He presides over the plenary sessions of the Central Executive Committee and the meetings of the Standing Committee, as well as over the Congress. If he so chooses, he can be the head of the party organ that controls and directs the government. And he did choose to be the president of the Supreme Committee of National Defense. As long as the Kuomintang is the government, the president of the Supreme Committee is naturally all-powerful, with authority that cannot in any way be impaired by law.

If, therefore, General Chiang Kai-shek's authority is in law unlimited, in fact it is no less so, thanks to his concurrently holding the presidencies of both the Executive Yuan and the Military Commission. As head of the Party and president of the Supreme Committee of National Defense, he is not required to be president either of the Yuan or of the Commission. But the fact is that he is both. He has always been the president of the Military Commission. Of the Executive Yuan, he has been the president since the beginning of 1936, except for the interval 1938 to 1940. He was once also Speaker of the People's Political Council, and is still on its Presidium. Though from the institutional point of view the practice of one man's holding all the leading posts of party and government tends to make that government personal, there is a good deal to be said in its favor, as it doubtless facilitates the handling of many urgent problems so often besetting a government in war-time.

It should, then, be emphasized that the most significant change in the machinery of government during war-time has been the creation of the Supreme Committee of National Defense and the centralization of power in the hands of its president.

V

Reviewing the developments that war has thus far brought about and looking into the future, one cannot help being struck by a number of problems which will await solution when the war is over.

The Kuomintang has ruled China for fourteen years. It has no intention to perpetuate rule by one party, and has professed constitutional democratic government as its ultimate goal. The politically articulate groups outside the Kuomintang have always clamored for democracy, and their voice is likely to be louder once the war is over. But how to arrive at democracy? To expect that the Kuomintang will practice self-denial and give up political power to its rivals or opponents is unthinkable, and the possibility of the rival groups being able to wrest that power from the Kuomintang is also remote. The Communist party may have that ambition; but, obsessed with a love for things Russian, it is unlikely to grow, if it grows at all, to such a stature as to be able to dispute political power with the Kuomintang.

But it is also to the interest of the Kuomintang to keep its pledges and prepare the country for a swift transition to democracy. If the pledges are broken or remain long unfulfilled, the Party will lose the moral right to govern. The existing People's Political Council is a promising instrument for introducing more and more non-Kuomintang participation in government. If some real power is given it, and if the politically articulate elements outside the Kuomintang are given more adequate representation on it, there is no reason why the Council should not develop into something from which a future assembly of the nation may very well derive lessons.

The Kuomintang has repeatedly declared for the convening of a National Congress to adopt a constitution. It may become necessary to call the Congress very shortly after the war is over, since further to postpone the step is likely to cause the Party embarrassment. Some three-quarters of the 1,800-odd delegates were elected before the war, and their mandate has never been declared void, in spite of the passage of time. But a new general election will be necessary if the Congress is to obtain general support of the people. It is only by means of such an election that the party in power will be able to accord, by one means or another, ample representation to elements other than itself.

As a deliberative assembly, the National Congress, as provided for by the Organic Law of May 14, 1936, is too large. It was Dr. Sun Yat-sen's idea to have a large congress play the rôle of the people, much as the people in a direct democracy like some of the Swiss cantons would play it. If this idea is adhered to, as it would certainly be by the Kuomintang, there is no way of dispensing with a large congress. The question is whether, without sacrificing the large numerical size of some 1,800 members, but confining functions to those of election and recall, and of initiative and referendum, as prescribed by Dr. Sun Yat-sen, it will be possible also to have a small body of persons elected by the Congress occupy a position midway between the People's Political Council and the Supreme Committee of National Defense. The function of the People's Political Council at present is more to hold the government responsible than to exercise any positive power of governing, while that of the Supreme Committee is the actual exercise of the governing power. If a small body of perhaps one hundred persons can exercise general supervision over the Five Yuan and at the same time share with the Executive and Legislative Yuan in the determination of policy, it could very well prove to be an effective substitute for, and successor to, both the People's Political Council and the Supreme Committee of National Defense, which, being a Kuomintang organ, will be out of place once the country passes to the stage of constitutional government. A strict adherent to Dr. Sun Yat-sen's teachings might raise the objection that this would run counter to his idea of entrusting the political power to the people or the people's National Congress and the governing power to the government of five yuan. But to allow a complete break with the past is no way to build up a permanent institution which will last. The function continuously discharged by the Central Political Committee and the Supreme Council and Supreme Committee of National Defense, and the usefulness of these in providing a link for the five yuan, certainly deserves as much attention as literary adherence to any set of rules and political organization, which in themselves should be adaptable to the actual conditions of the day.

If, however, after General Chiang Kai-shek, another strong leader is to follow, the solution of the constitutional problem may take an entirely different turn. General Chiang, and then the leader after him, may, in the capacity of president of the Republic, take the place now held by the Supreme Committee of National Defense. As president of the Republic, such a leader could always make himself a link between the five yuan and have a large voice in their affairs. But if such should happen, there would also be a possibility of the rise of personal government by the president, with the National Congress enjoying an ephemeral political power, and with the five yuan taking strict orders from him. Such a government can hardly be justified by conditions other than those of war-time.

Perhaps to practice democracy inside the Kuomintang is of more real significance than to try vainly to establish democracy for the country at large. If during the period of reconstruction the country shall continue in the hands of the Kuomintang, as it is not unlikely to do, it is evident that it will not be democratized before the Party itself is democratized. The Central Executive Committee, in a plenary session in March, 1941, was quite unanimous that both the organization and the leadership of the Party should be put on a more popular basis—that is to say, that election from below should be substituted for appointment from above as a method of organization for the executive committees of the provinces and districts. If this comes true—as it has not for some twelve or thirteen years—the Kuomintang will easily secure a much broader basis of popular support, and may become more solicitous about democracy in general.

When the war is over and reconstruction begins, the problem of administrative reorganization may be of even greater urgency than it has been during the war. During the war, the separate existence of the Military Commission not only has been tolerated, but has been actually welcomed, as it insures efficiency and dispatch in military operations. But if it is to continue after the war, not only the integrity of executive power will be non-existent, but friction between the Military Commission and the Executive Yuan will be unavoidable, especially if the two organs are not in the hands of the same man. The case for amalgamation is obvious enough. The question is whether it will be easy to effect the amalgamation and bring military power within the realm of the executive.

No one will claim that Chinese administrative organization was on a rational basis before the war, and there have been, in the course of the war, surprisingly few readjustments and little reorganization of the Executive Yuan. It cannot be supposed that the present administrative set-up will meet the needs of a reconstruction period. The war is a difficult business, but it is not nearly as difficult as the work of reconstruction. The war we have been conducting for five long years is in a sense a passive endeavor. Nothing more is required than to oppose resistance to the enemy's advance. But to reconstruct a war-torn country is something more. It will be a positive endeavor requiring sound planning and economic and efficient execution. Hence the necessity for overhauling the machinery of government to suit the needs of the day. To muddle through the business of government with the existing machinery, as we have been doing during the war years, will be fatal. But how the machinery shall be reorganized is something of which no one can as yet be sure. In other words, the problem of reorganizing the machinery of government, like the more fundamental problems of democracy and leadership, will be awaiting solution when the war is over—the more because solution of it has never been attempted during the war.

AMERICAN GOVERNMENT AND POLITICS

Calhoun and Federal Reinforcement of State Laws. In 1835, Southerners were alarmed and indignant at the growing practice on the part of Northern Abolitionists of mailing incendiary Abolitionist literature into the Southern slaveholding states, and were casting about for some effective method of dealing with this menace to their "peculiar institution." The memory of Nat Turner's insurrection was still fresh in many Southern minds, and the circulation of such literature as the Abolitionists were sending through the federal mails might, if the practice were not checked, result in an even more destructive uprising of the slaves. In Charleston, on July 29, the postoffice was forcibly broken into and a mass of literature found there was publicly burned. This sort of action was hardly, however, a satisfactory solution of the problem.

In his annual message to Congress in December, 1835, President Jackson recommended legislation prohibiting the circulation of such literature in the Southern states.[1] On motion of Calhoun on December 21, this portion of the message was submitted to a special committee instead of to the standing committee on Post Office and Post Roads. Calhoun gave as his reasons for wishing reference of the matter to a special committee that, in the first place, there was on the regular Post Office committee only one member from the slaveholding states, which were most concerned about this subject, and that, in the second place, the time of the regular committee would be largely consumed with other matters, so that it would not be able to devote sufficient attention to what he considered a subject "of the greatest magnitude," one "involving very delicate and momentous principles." He wished, therefore, that a special committee be appointed "that should calmly and deliberately consider the subject." Though there was some objection from other members, Calhoun had his way, and a select committee of five, of which he became chairman, was appointed.[2]

The bill reported from this committee by Calhoun on February 4, 1836,[3] did not follow at all the lines suggested by the President. Such a bill as Jackson had proposed would, insisted Calhoun, have been an unconstitutional abridgment of the freedom of the press; moreover, it would have failed to make clear a principle which Calhoun, as the leading champion of the state sovereignty theory, regarded as all-important, namely, that the federal government, as the agent of the states, was obligated to use its powers to reinforce such legislation as the states might deem it necessary to enact for their own protection. Accordingly, Calhoun had used his influence in the committee[4] to secure adoption by it of a bill based on what he felt to be the correct principles—principles which were expounded in a long report accompanying the bill and further elaborated by Calhoun on the floor of the Senate. As reported from the committee, the bill would punish any postmaster who received and forwarded to any state material of a sort prohibited by the state from circulating within its boundaries.[5] Thus the state was to be made the judge of what kind of material might be sent through the federal mails to its inhabitants, and the federal government was to reinforce the will of the state by forbidding its own agents to violate the wishes of the state.

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[1] "In leaving the care of other branches of this interesting subject [incendiary literature] to the State authorities, to whom they properly belong, it is nevertheless proper for Congress to take such measures as will prevent the Post-Office Department, which was designed to foster an amicable intercourse and correspondence between all the members of the confederation, from being used as an instrument of an opposite character. . . . I would, therefore, . . . respectfully suggest the propriety of passing such a law as will prohibit . . . the circulation in the Southern States, through the mail, of incendiary publications, intended to instigate the slaves to insurrection." *Sen. Jour.*, 24th Cong., 1st Sess., p. 31.

[2] *Cong. Globe*, 24th Cong., 1st Sess., p. 36. The other members of the committee were King of Georgia, Mangum of North Carolina, Linn of Missouri, and Davis of Massachusetts. *Sen. Jour.*, p. 46.

[3] *Sen. Jour.*, p. 139.

The bill was debated in the Senate from time to time until June 8. During this time, the original bill was replaced by a substitute measure offered on April 30 by Senator Grundy of Tennessee; but the substitute bill retained the essential principles of the original, the chief difference being that the postmasters in the delivering, rather than those in the receiving, stations were to be held responsible.[6] During the debates, the members were in general agreement that the sending of incendiary literature into the Southern states was a practice to be condemned and stopped if possible. There could be little doubt that the bill which they were considering would furnish a means to this end. The objections raised were for the most part on the grounds of its unconstitutionality. The chief attacks upon the bill were that it would be an unwarranted exercise of power by the federal government and an abridgment of the freedom of the press. One senator, however, directly attacked Calhoun's favorite principle of the obligation of the federal government to reinforce laws passed by the states and deemed by them necessary to their safety; on April 7, Senator Davis, himself a dissenting member of the committee which had reported the bill, challenged Calhoun's principle: "He denied the right of the Government to exercise a power indirectly, which it could not exercise directly; and if there was no direct power in the Constitution he would like to know how they would get the power of the States. . . . He asked if the State of South Carolina could give a power to the General Government not contained in the Constitution of the United States."[7]

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[4] Calhoun's influence on this committee in securing the bill be desired seems to have been decisive. " . . . only one member of the committee concurred with Calhoun in making it. One of the members was altogether opposed and the other two preferred a bill which differed from the one advocated by the chairman." H. C. Hockett, *Constitutional History of the United States, 1826–1876* (New York, 1939), p. 179.

[5] *Senate Bills and Resolutions*, 24th Cong., 1st Sess., S. 122, Feb. 4, 1836.

[6] *Ibid.*, Apr. 30, 1836; *Sen. Jour.*, pp. 322, 399.

In the report which accompanied the bill, Calhoun had made his principle perfectly clear: "The internal peace and security of the States are under the protection of the States themselves, to the entire exclusion of all authority and control on the part of Congress. It belongs to them, and not to Congress, to determine what is, or is not, calculated to disturb their peace and security; . . . In the execution of the measures which may be adopted by the States for this purpose, the powers of Congress over the mail, and of regulating commerce with foreign nations and between the States, may require coöperation on the part of the General Government; and it is bound, in conformity with the principle established, to respect the laws of the State in their exercise, and so to modify its acts as not only not to violate those of the States, but, as far as practicable, to coöperate in their execution."[8]

Thus the powers of Congress, including the commerce power, must be used to reinforce laws of the states which the latter might deem necessary for their internal peace and security. Moreover, as Calhoun made clear in his great speech in the Senate on April 12 explaining and defending his bill, this was not merely a moral but a constitutional obligation of Congress: " . . . I do not mean on the principle of *concession*. I take higher grounds. I mean under the obligation of the *constitution itself*."[9]

Calhoun's logic failed, however, to convince the majority of the Senate. On June 8, Grundy's substitute for the original bill failed of adoption,[10] and with it Calhoun's attempt to secure acceptance of his doctrine of the constitutional necessity of federal reinforcement of state laws.[11]

The Civil War destroyed forever all chance of acceptance of Calhoun's theory of the complete sovereignty of the states. Toward the end of the century, however, when many states were again finding difficulty in dealing satisfactorily through the exercise of their police power alone with a matter which they considered inimical to the welfare of their citizens, namely, the traffic in intoxicating liquor, there was an interesting revival of the doctrine of federal reinforcement of state laws. There was a demand on the part of many of the "dry" states that Congress use its commerce power to prevent the shipment of intoxicating liquor into states whose laws prohibited its manufacture or sale.

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[7] *Cong. Globe*, pp. 288 f.

[8] Richard K. Crallé (ed.), *Works of John C. Calhoun* (New York, 1863–64), V, 197, 199. [9] *Ibid.*, II, 527. [10] *Sen. Jour.* p. 416.

[11] Senator Niles' statement on April 13 probably expressed the view of the majority: "However he might deprecate the circulation of these mischievous publications, he was not satisfied that there was any urgent necessity for calling in the agency of this [the federal] Government." *Cong. Globe*, 24th Cong., 1st Sess., p. 301. No further effort was made to deal with the problem of incendiary literature through federal reinforcement of state laws.

The advocates of federal reinforcement of state laws dealing with the liquor traffic were, however, more successful than Calhoun had been. In 1890, Congress passed the Wilson Act subjecting all intoxicating liquors transported in interstate or foreign commerce to the police power of the states upon their arrival therein, regardless of whether they remained in their original packages or not.[12] Thus Congress admitted, as Calhoun had argued, that "the powers of Congress . . . of regulating commerce with foreign nations and between the States may require coöperation on the part of the general government."[13] To be sure, the advocates of this legislation had not, as had Calhoun, insisted upon the constitutional *obligation* of Congress to act; nor had Congress itself admitted any such obligation. Nevertheless, the fact that Congress yielded to the extent of actually supporting state legislation in this manner, even though it might be only on what Calhoun had called "the principle of concession," seems to validate at least part of Calhoun's thesis. In upholding the statute the following year against charges of an unconstitutional interference with commerce and an improper delegation by Congress to the states of its commerce power, the Supreme Court pointed out that the Constitution "does not provide that interstate commerce shall be free," and that Congress had not delegated its power, but had merely exercised its own power over interstate commerce to divest certain articles of their character as commodities of interstate commerce "at an earlier period than would otherwise be the case."[14]

Some years later, Congress went further in applying the principle of federal reinforcement of state laws on the liquor traffic and in the Webb-Kenyon Act of 1913 forbade the *shipment or transportation* in interstate commerce of liquor intended for use or sale in states whose laws prohibited such use or sale.[15] Though vetoed by President Taft on the ground that it was an improper "delegation by Congress to the states of the power of regulating interstate commerce in liquors," or else an unconstitutional exercise by Congress itself of its commerce power in that it erected barriers to commerce which it had been the intention of the framers of the Constitution to prohibit,[16] the act was passed over his veto and subsequently in 1917 upheld by the Supreme Court, which again denied that there was any improper delegation of power or any unconstitutional exercise by Congress of its commerce power.[17] Moreover, in its opinion on this occasion the Court advanced farther toward acceptance of the position which Calhoun had earlier assumed than either it or Congress had previously done. Chief Justice White, giving the opinion of the Court, said: "But notwithstanding it is not vested with supervisory power over matters of local administration, *the responsibility is upon Congress*, so far as the regulation of interstate commerce is concerned, *to remove the restriction upon the State* in dealing with imported articles of trade within its limits, which have not been mingled with the common mass of property therein, *if in its judgment the end to be secured justifies and requires such action*."[18]

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[12] 26 *U.S. Stat. at Large,* 313. The original-package doctrine, established by Chief Justice Marshall in Brown v. Maryland in 1827, had hitherto, of course, prevented states from exercising any control over such shipments while they remained in their original wrappings.

[13] Calhoun's Report, *supra.*

[14] *In re Rahrer,* 140 U.S. 555, 562.

[15] 37 *U.S. Stat. at Large,* Pt. I, pp. 699 f.

[16] *Cong. Record,* Vol. XLIX, Pt. V, pp. 4291 f.

It will be recalled that at the time of the debate on Calhoun's bill the Senate was agreed that the purpose of the bill was desirable. It will be recalled also that at that time Calhoun argued that it was the responsibility of Congress, so far as the regulation of interstate commerce and of the post-office was concerned, to remove the restriction upon the states in dealing with imported incendiary literature. At that time, however, the Senate refused to accept the principle that there was any real *responsibility* resting upon Congress under the circumstances. But by 1917 the Supreme Court appeared to be accepting Calhoun's thesis that under these circumstances such a responsibility *did* rest upon Congress. The only differences between Calhoun's position in 1836 and that of the Supreme Court in 1917 were these: whereas Calhoun insisted that the decision as to whether "the end to be secured justifies and requires such action" rested with the states, the Supreme Court left that decision to Congress; and whereas Calhoun insisted that under such circumstances Congress was *constitutionally* as well as morally obligated to act, the Supreme Court did not specifically state that the responsibility upon Congress which it mentioned was a *constitutional* as well as a moral one, although such an inference might, indeed, be drawn from its language. Of course, the fact that the validity of Calhoun's theory of the complete sovereignty of the individual states had been destroyed by the Civil War made it impossible thereafter to hold that the decision as to what action Congress must take under any given set of circumstances rested with the individual states. In other respects, however, the Supreme Court by 1917 seems to have approached very closely to complete acceptance of the Calhoun thesis, if, indeed, it had not completely accepted it.

Some years later, Congress applied this same principle of federal reinforcement of state laws to prison-made goods, following closely the procedure which had earlier been followed in dealing with intoxicating liquor.

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[17] Clark Distilling Co. v. Western Maryland Railway Co., 242 U.S. 311–32.

[18] Quoted by the Chief Justice from an earlier opinion in Leisy v. Hardin, 135 U.S. 123 f.; 242 U.S., 329. The italics are mine.

In 1929, the Hawes-Cooper Act subjected such goods to the police power of the states upon their arrival therein,[19] just as the Wilson Act had done in regard to intoxicating liquor. This act was upheld by the Supreme Court in 1936 on the same grounds as those on which the Wilson Act had been sustained.[20] In 1935, the Ashurst-Sumners Act prohibited the transportation in interstate commerce of prison-made goods in the same language and under the same conditions as those applied to liquor by the Webb-Kenyon Act.[21] In the case in 1937 which upheld this act, the language of the Supreme Court concerning the responsibility of Congress was not as strong as that quoted with approval from Leisy v. Hardin by Chief Justice White in 1917. Speaking for the Court on this occasion, Chief Justice Hughes said: " . . . the Congress *may* prevent interstate transportation from being used to bring into a State articles the traffic in which the State has constitutional authority to forbid, and has forbidden, in its internal commerce. . . . The pertinent point is that where the subject of commerce is one as to which the power of the State may constitutionally be exerted by reduction or prohibition in order to prevent harmful consequences, *the Congress may, if it sees fit,* put forth its power to regulate interstate commerce so as to prevent that commerce from being used to impede the carrying out of the state policy."[22] There is here no indication of any responsibility, either constitutional or moral, resting upon Congress to pass such legislation. It is merely stated that Congress "may, if it sees fit," take such action. In other words, the Court seems to have receded somewhat from its position in 1917, when it most nearly approached Calhoun's position. Nevertheless, the fact that Congress did pass legislation in support of state legislation in connection with both liquor and prison-made goods goes far to support Calhoun's thesis that it is the responsibility of Congress to reinforce state legislation whenever the states feel that such supporting legislation is necessary to their safety and welfare.

It is true, of course, that the federal legislation respecting the transportation of liquor and prison-made goods rested upon the commerce power of Congress, whereas the bill proposed by Calhoun for controlling the transportation of incendiary literature rested upon Congress's control of the post-office and was attacked chiefly on the ground that it would constitute an abridgment of the freedom of the press. Since Calhoun's day, however, Congress has forbidden the use of the mails for the transportation of undesirable literature, and such action has been held by the Supreme Court to be no unconstitutional interference with freedom of the press.[23] Moreover, in 1940 Congress passed an act applying the Calhoun principle of federal reinforcement of state laws which was based on its control of the mails as well as upon its commerce power. This measure, entitled "an act to divest prize-fight films of their character as subjects of interstate or foreign commerce, and for other purposes," repealed an earlier act of 1912 which, employing the Jacksonian principle, had forbidden interstate transportation of prize-fight films through the mails or otherwise and had provided suitable penalties for violation.[24] Instead of this, the 1940 act merely subjected such films to the police power of the states immediately upon their arrival therein, leaving to the individual states the imposition of penalties and the problem of enforcement[25]—thus employing what Calhoun had contended was the only proper method of handling such a situation. Because of the nature of the material involved and the fact that, like incendiary Abolitionist literature, it could be most easily transported through the mail, this instance presents the closest parallel to the problem faced by the Southern states in Calhoun's day; and the ultimate solution of it was entirely in accord with Calhoun's proposal in 1836.

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[19] 40 *U.S. Stat. at Large,* 1084.

[20] Whitfield v. Ohio, 297 U.S., 431–41.

[21] 49 *U.S. Stat. at Large,* Pt. I, pp. 494 f.

[22] Kentucky Whip and Collar Co. v. Illinois Central Railroad Co., 299 U.S. 348, 351. The italics are mine.

In conclusion, it can be said that Calhoun's position in regard to federal reinforcement of state laws has been in large measure validated by subsequent developments in that field. The more extreme points in his argument, namely, that it is the prerogative of the states to decide when such federal legislation is necessary, and that when any state so decides, Congress is *constitutionally* as well as morally obligated to pass such legislation can, of course, never hope for acceptance, since they rest upon the discredited and discarded theory of state sovereignty. Nevertheless, developments since Calhoun's day have established that Congress can, if it wishes, prevent deleterious literature (or merchandise) from passing through the mails (or in interstate commerce), and that it can, if it wishes, permit the individual states to determine what kinds of literature (or merchandise) should be denied the protection within their boundaries of the power of Congress over the mails (or over commerce). Since the Constitution has not been amended in any way affecting these powers of Congress, it is clear that Congress could in 1836 have constitutionally prevented incendiary literature from passing through the mails into any state in contravention of the laws of that state. Furthermore, the developments since Calhoun's day which we have noted afford ground for believing that if any group of states should now pass laws excluding certain literature from circulation within their boundaries because they felt that such literature would be inimical to the safety or welfare of their citizens, Congress would feel some obligation to use its own powers to support and render more effective such state legislation. This, after all, is the major part of what Calhoun argued for in 1836.

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[23] *Ex parte* Jackson (1878), 96 U.S. 727–37; *In re* Rapier (1892), 143 U.S. 110–35. Calhoun himself had, of course, claimed that entire prohibition of any literature from the mails, in the manner suggested by President Jackson in 1835 and applied later in the century by Congress to certain types of literature, would be an abridgment of freedom of the press. In doing so, he was influenced, however, possibly by political animosity to Jackson and certainly by his aversion to the exercise of strong powers by the central government unless it were made clear that such powers were being exercised by the federal government in its capacity as the agent of the states and at their behest.

[24] 37 *U.S. Stat. at Large*, Pt. I, pp. 240 f.

[25] 54 *U.S. Stat. at Large*, Pt. I, p. 686.

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Judicial Attitudes Toward State-Federal Relations. In August, 1787, while the Convention at Philadelphia was deliberating upon the commerce clause, the delegates witnessed a demonstration of John Fitch's steamboat, propelled uncertainly against the current of the Delaware. In the development of American federalism it may seem that technology—of which Fitch's steamboat will for the moment serve as a symbol—has counted for more than what the statesmen in Independence Hall worked out on paper for the distribution of power between state and nation. This is not to bespeak for poor John Fitch a niche beside the fifty-five founders; steam would have produced its centralizing effect upon economy and government even had there been no contribution by Fitch—who was, moreover, a cantankerous anti-Federalist in politics. I mention the coincidence merely to suggest that ingenious men invent and enterprising men initiate shifts in the nation's economy, and that the institutions of federalism have to adjust themselves to the resultant thrusts and resistances in the social medium. It is only at the end of the cycle that there comes a decision by the Supreme Court holding that the state had full power to act in the premises, or that the matter belonged exclusively to Congress, or that the command of the state was enforceable until Congress broke its silence.

Of course everyone worth his salt in our business will look beyond the case to examine its economic and political context. But in centering our attention as we do upon great constitutional landmarks such as Gibbons v. Ogden and Cooley v. Board of Wardens, we may not realize how inadequate to a study of American federalism is the mere exegesis of leading cases. The adjudication of the Supreme Court is episodic; a situation may have been developing for years before men found it to their interest to litigate. For example, how is one to account for the long delay in threshing out the constitutional issues involved in state laws discriminating against the products of other states? That held bad in Ward v. Maryland in 1871 had been on the statute-book since 1852; the ordinance invalidated in Guy v. Baltimore in 1880 had been enacted by the city in 1858 under authority of a statute of 1827. Like instances might be multiplied. Should one conclude that the types of interstate trade discriminated against had been too trivial to support a law suit, or was it only because the Civil War had taught the country and the Court to think more spaciously, that these preferential laws appeared obnoxious to our federalism? To ignore the timing of litigation as purely adventitious is often to miss some portentous development in our mode of life and thought. The importance of chronology in the line of cases from Holden v. Hardy to West Coast Hotel Co. v. Parrish is striking but not unique.

It is familiar nowadays—what is often hinted by a long list of *amici curiae*—that when the Court passes upon the action of one state it may practically be deciding the validity of like action in many states. But in considering the significance of older cases we may never have troubled to make a survey of session laws to discover whether this statute was unique, or was a part of some cycle in legislation. Even after we have read the statute-books, we will not know the actual position unless we inquire how the law was construed and applied by the state's officers. For example, the so-called unit rule for apportioning state taxation of rolling-stock used in interstate commerce, approved by the Supreme Court in Pullman Co. v. Pennsylvania, was pure improvisation by the Pennsylvania tax authorities: the statute itself said not a word about apportionment.

In taking a great decision as a starting point, we are liable to accept the Court's analysis as inevitable, and blind ourselves to other possible ways of treating the problem. Consider how long we were imprisoned by Marshall's dictum that the power to tax involves the power to destroy. Will we ever be able to take a wholly independent view of the problem in Brown v. Maryland? One obvious aid, often overlooked, is to scan critically the judgment of the court below, especially when the case came up from a state court. Were the judges below speaking the language of parochialism, of state-rights dogmatism, or were they making a reasoned evaluation of the interests at stake? Only when we discover how the case looked before it came up can be appreciate the form into which the Supreme Court chose to cast it.

If we look for the crude stuff out of which the great cases on federal-state relations arise, we will typically find adventurers and leaders with practical objectives which they pursue with only incidental concern for the "true meaning and intent" of the Constitution. Take, as an example, the following draft of a petition to the New Jersey legislature, written by John Stevens of Hoboken, a contemporary of Fulton and brother-in-law of Fulton's partner Livingston. The time is about 1830, and the object is to secure authority to build the first railroad across New Jersey, from opposite New York to the Delaware: " . . . if this golden opportunity is suffered to slip through our fingers [wrote Stevens]—If Congress should be permitted to interfere with us—If under colour of 'establishing Post Roads' the U. S. should undertake to lay out straight roads from City to City—this brilliant prospect would vanish from before us like a 'Mid Summers night Dream' [sic] . . . let us, in vulgar phrase, 'make hay while the sun shines.' But should Congress let us alone—Still I perceive we are in imminent danger of becoming a . . . prey to a host of speculating gentlemen from Phila. & New York—men who beset our Legislature—Incorporated companies must rise up like mushrooms in all quarters, and gull the good citizens of this State out of their hardly acquired earnings—Let us for once act with our eyes open—Let us not cast away from us wantonly so precious a jewel—Let us retain the profits of the railroad system in our own hands."

This is typical of the mixed motives—business acumen rationalized as zeal for the public good, an urge for self-realization, social vision, and patriotism which may be local or national as dictated by self-interest—with which purposeful men initiate changes to which the federal system must respond. Presently business rivals were appealing to Congress in the language of high-toned Federalism to give them a charter which would override the monopoly Stevens had procured from the legislature of New Jersey. Lawyers are called in to conduct the legal campaigns necessary to the achievement of such purposes as these, and presently battle is joined over questions of commerce power, impairment of contracts, public purpose, intergovernmental immunity, judicial power, due process of law. We should be astute to look beyond these several controversies to discern their relation to movements in economic, and hence also in political, organization. A case need not involve any question of constitutional law to have important implications for the federal system. Was it *intra vires* for a small railroad in one state to lease its entire property to another corporation, thereby facilitating the formation of a single interstate trunk line? Was it the duty of a carrier to provide equal facilities to several express companies, or might a single express system be fostered? These common law issues were before the Supreme Court in 1886, contemporaneously with the great constitutional question in Wabash Railway Co. v. Illinois, and through them all one can see that the Justices were concerned, not with abstractions, but with very practical questions as to what sort of railroad system this country should have, and in what respects it should be controlled by the one sovereign or the other. If we would push our inquiries into such unworked sources as corporate records and reports, and the opinions rendered by counsel as to the legal practicability of business objectives, we might learn much of the impulses which operated behind litigation.

So I venture to suggest that we ought to study the judiciary, and especially the Supreme Court, more imaginatively, to make a mightier effort to articulate litigation with the elusive data of social and economic development. We need to know much more of the history of major railroad systems—one recalls Professor Summers' excellent study of *The Baltimore and Ohio in the Civil War*—much more of the history of corporate practices, of the rise of nation-wide marketing, of the interaction of judicial decision, state taxation, and business practice. When a legislature laid a tax, was it merely asking that interstate commerce pay its way, or was it seeking to cast local burdens on the inhabitants of other states? If the tax was invalidated by the Court, what happened then—did the state contrive to perpetuate the evil while altering the form? Sometimes one suspects that neither judges nor legislators realized the practical consequences of their acts. For example, the bewilderment of the Supreme Court on March 3, 1873, when it invalidated the Pennsylvania tax on interstate freight while sustaining the tax on gross receipts, was matched by the confusion of the Pennsylvania legislature eighteen days later when it repealed the tax held good and deliberately retained the one invalidated. We have been too prone to be satisfied with the obvious materials and to repeat the talk of the Court, while we need to develop more resourcefulness in exploring hidden areas and opening new vistas to understanding. Need it be said that this is not a plea for more economic interpretation based on *a priori* assumptions congenial to the commentator?

It has been the task of the Supreme Court to make the federal system viable. I used to think it a godsend that the records of the Constitutional Convention were not available for citation in Marshall's Court, supposing that the thoughts of the founders must have been more provincial than those of the great Chief. Professor Abel has recently shown these suspicions to be unjust: under his discriminating interrogatory, the framers speak out with clear voice to profess exactly those broad principles which an expanding society needed. None the less, it was Marshall and his brethren who gave meaning to the charter.

As Marshall conceived the problem of state-federal relations, it was a matter of rendering to Caesar the things that are Caesar's. In McCulloch v. Maryland, he developed an analysis which seemed to leave the state all that belonged to it, while placing wholly beyond its reach all emanations from the authority of the Union. There were to be no clashing sovereignties, no interfering powers. Marshall had a black and white mind. His brother Johnson, one of the few contemporaries who left a distinct imprint on the record of the Court, later insisted that the legislation of the two sovereigns must meet and blend at points, making separation difficult; for such cases he counseled "a frank and candid coöperation for the general good." How much statesmanship lay behind Johnson's remark is an interesting subject for speculation.

It was the work of Taney's Court, not without many individual differences, to arrive at more elastic solutions for the emerging problems of federalism. There were matters of commerce, of banking, of expanding corporate activity, with which Congress was as yet unconcerned. Taney was prepared to sustain the government which first reached the spot—which abhorrence of a political vacuum will explain why there is almost as much of Taney as of Marshall in the jurisprudence of the Supreme Court today.

We shift our position to 1887—the centennial of the Constitution, the year of the first Interstate Commerce Act, almost the close of Waite's chief justiceship. A crowd of controversies born of the post-war expansion of commerce were pressing for decision. The commerce clause was then the great instrument for determining federal-state relations, and the Court was busy establishing the lines over new and old ground. "A great number and variety of cases involving the commercial powers of Congress have been brought to the attention of this court during the past 15 years," wrote Bradley J. in 1888, "which have frequently made it necessary to re-examine the whole subject with care . . . and . . . to modify in some degree certain dicta and decisions." A digest of the cases decided between 1886 and 1888 would amount to an entire code of federalism. The Fourteenth Amendment had not yet been put to work, but the possibility of employing it against unwise state action was evidently being entertained. It was a tough-minded Court, alive to its responsibilities. In the summer of 1890, Justice Field, broken in health, had gone to Aix to be cured. Writing back to his brother Bradley, he said: "I have had a rough time but now believe I shall see you again in the flesh—and be able to fight with you for the establishment of sound constitutional doctrines. . . . You and I, my dear Judge, have got a great work to do on the Bench—we have got to preserve, strengthen, and so fortify as to be impregnable the advanced grounds of constitutional law, on matters of commerce—and equality of rights . . . so that all that has been accomplished in either direction since the Civil war may be transmitted unimpaired to the guardianship of our successors."

To Justice Field, precisely as to Marshall, the problem had seemed one of absolute principles. Doing interstate business was a federal right which no state might tax. The privilege of incorporation came from the state and might be taxed as arbitrarily as the legislature pleased. By the end of Fuller's chief justiceship in 1910, it had become evident that one absolute could not be allowed to devour the other. It was a problem of relativity and accommodation, not of syllogisms; the Court must look beyond forms to substance, and think in terms of economics. This, of course, was the import of Western Union v. Kansas. The year 1910 was also the date of the White Slave Act, typical of federal regulations of commerce for purposes of police. How far this national power could be used to meet national needs was not yet clear.

Today, as we face a moment of supreme urgency with a new Court, certain judicial attitudes are marked. First, the supremacy of national authority, in respect of commerce and doubtless of all other powers. Here the Court draws inspiration from Marshall. Yet in respect of state taxation, and of regulation until Congress unequivocally occupies the field, the Court acts in the spirit of Taney. In the social conditions of yesterday, a sales tax became imperative, and constitutional doctrine was adjusted accordingly. The Court today needs no reminder that our government is composed of many members and that the supreme judiciary should allow scope to legislative and administrative action on all levels. Like Johnson J. in Gibbons v. Ogden, it sees that national and local regulations may meet and blend at points, and that there should be "frank and candid coöperation for the general good." Consider its handling of Edwards v. California, testing the validity of a state law excluding indigents. When I asked the attorney-general of California for a copy of his brief, I was told his office had never heard of the case; it had been appealed from a superior court with only a district attorney to defend a type of statute recently adopted by many states. It was therefore in character that before striking it down the Court ordered reargument, with a request for advice as to the actual judicial and administrative interpretation of the law.

While questions of war power have yet to emerge, glimmerings from other cases disclose a belief that the national government must be the sole authority in matters involving foreign relations, while the values implicit in the bill of rights will be judiciously balanced against the supreme imperative that this nation must be able to bear its part in establishing a world wherein human decency shall be universally secured. In time of foreign peril as of domestic maladjustment, we are one people; our federalism is an elastic system which can take on varied forms in response to new demands.

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Erie v. Tompkins and the Relationship Between Federal and State Courts. Erie v. Tompkins[1] evidences decentralizing trends in our federal

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[1] Decided April 25, 1938, and reported in 304 U.S. 64; 58 Sup. Ct. 817; 82 Law Ed. 1188. The prevailing opinion was written by the late distinguished member of the Supreme Court, Louis D. Brandeis. A dissenting opinion, in which he was joined by Mr. Justice McReynolds, was written by Mr. Justice Butler. Mr. Justice Reed concurred in a separate opinion, and Mr. Justice Cardozo took no part in either the consideration or decision of the case.

Tompkins, a citizen of Pennsylvania, sued the Erie Railroad for damages sustained by him when he was struck by something projecting from a passing train. The system in two different ways—one fairly obvious and relatively orthodox; the other neither obvious nor orthodox, but probably the more significant. The first aspect may be touched upon very briefly and the ramifications of the second explored more fully.

The obvious side of Erie v. Tompkins lies in its rejection of a common law of the United States available for application by the federal courts in diversity cases. This conception was given expression by Story in Swift v. Tyson,[2] and has been followed in many, if not most, of the succeeding cases building upon and expanding Story's doctrine.

The Erie v. Tompkins reversal of this position is relatively orthodox decentralization, because a national rule system in a particular field of decision is simply discarded in favor of multiple state rule systems. It is true that Congress has never attempted to implement this particular rule system by statute, but it is quite possible to regard any national rule system as exposed to the assertion of a corresponding congressional legislative power. Hence one may explain the Erie v. Tompkins rejection of a federal common law as a measure guarding against this contingency.

As such, it does not differ fundamentally from other shifts in the distribution of governmental power between central and local governments. It is true, however, that it does not have all of the usual effects of a decentralizing move on this plane. By this I mean that the elimination of a national rule to be applied in diversity cases does not, as a practical matter, involve any sacrifice of uniform standards. The federal courts have not undertaken to impose the rules applied by them in diversity cases upon the state courts dealing with the same subject-matter.[3] And since the mere force of federal example has not sufficed to reduce the area of disagreement among the forty-eight states, the federal jurisdiction itself has amounted to a forty-ninth legal tongue in our land of many legal tongues.

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accident occurred in Pennsylvania, and liability, therefore, would normally be determined by the law of Pennsylvania. But suit was brought in New York because the defendant was a corporation organized under the laws of that state, and, in the federal district court for the Southern district of New York, because of the diversity of citizenship. The principal question before the Court was the extent to which it was bound to apply rules of law laid down by the Pennsylvania state courts in analogous situations. On the authority of Swift v. Tyson, decided by the Supreme Court in 1842, the federal trial court held, and the Circuit Court of Appeals affirmed, that it was not bound to follow the state rule. The Supreme Court reversed the lower courts on the ground that Swift v. Tyson must be overruled. Since, in so holding, the freedom of judicial decision by federal courts was restricted, a decentralizing tendency of some sort must be attributed to Erie v. Tompkins.

[2] 16 Pet. 1; 10 Law ed. 865.

[3] In dealing with its own citizens, each state is as much at liberty to develop its own common law as if there were no federal jurisdiction in cases of diversity of citizenship.

It is also perhaps worth noting that Erie v. Tompkins is not what may be called "politically" decentralizing. By this I mean that the concession to state authority involved does not substitute state officials for national officials in any administrative capacity. There is no net reduction in the citizen's contacts with officers of the national government, and hence there is no reason to expect any change in his habits of obedience. In order to get a decentralizing move having this last potential, we should have to adopt one of the many proposals to turn diversity cases over to state *courts* exclusively as well as to state *law*.[4]

Taking all of these considerations together, I think we may say that the elimination of a common law of the United States as a factor in the decision of these cases is relatively innocuous, as well as orthodox, decentralization. The same thing cannot be said, however, of the second aspect of Erie v. Tompkins. What I have in mind here is the implied rejection of so much of Story's opinion in Swift v. Tyson as goes to the right of federal judges to correct state judges on the latter's interpretation of state law. The present Supreme Court does not distinguish between this kind of federal power and the kind of federal power which flows from the assumed existence of a general law of the United States which Congress might amend at will. Both are supposed to represent the authority of the federal government, and are, according to Brandeis,[5] equally unconstitutional when employed in diversity cases.

Now in analyzing this position we need not spend much time on Section 34 of the Judiciary Act of 1789. Story was clearly wrong in holding that the expression "laws of the several states" was intended to exclude state judicial decisions. The plural form "laws" was used as a substitute for separate references to *the* law in each of the several states.[6] We may take it for granted, then, that it is to *the* law of a state that Congress refers the federal courts in all these cases; and we may also go along with Brandeis so far as to say that any other disposition of this jurisdiction by Congress would be unconstitutional. But this still leaves without adequate explanation his further assumption that no judicial discretion or independent judgment may be employed by federal courts in the interpretation of the state law.

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[4] The elimination of federal courts as well as federal rules would have meant in the instant case that the courts of New York would have been called on to apply the law of Pennsylvania—a simple conflict-of-laws situation.

[5] Technically, it is quite proper to refer to the opinion of the Court and the opinion of Mr. Justice Brandeis interchangeably. Mr. Justice Reed was the only member of the majority to place himself on record with a word of caution. It is, however, more than likely that the inarticulate four followed Brandeis with some uneasiness.

[6] The significant reference here is, of course, Charles Warren's article, "New Light on the History of the Federal Judiciary Act of 1789," *Harvard Law Review*, Vol. 37, pp. 81–88.

He clearly means to say that a current decision by a state court of last resort which is on "all fours" with the situation presenting itself in the federal court must not be disregarded. But this is really a highly ambiguous proposition which the facts in Erie v. Tompkins do not help us to resolve. The facts were that the lower federal court had refused to consider the law of Pennsylvania at all, on the ground that there was a federal rule covering the situation. This would have been error on the narrower ground already discussed, but it does not help us much in determining how much liberty the lower court might have taken in arriving at the law of Pennsylvania without finding itself in error on the wider ground which the case apparently stands for. In other words, what kind of a precedent is the latest decision of a state court supposed to furnish federal courts? Or, if the state decision is not a precedent, what is it?

Assuming for the moment that we are dealing with a common-law theory of precedent, there would seem to be no way of achieving anything like the certainty of application which Brandeis contemplates for state decisions short of recognizing them as what are sometimes called "absolutely binding" precedents. Now I have no desire to become hopelessly mired in the subtleties of *stare decisis* in order to discover what absolutely binding precedents are in the abstract. Precedents, no doubt, enjoy different degrees of authority for which there are a number of seductively simple formulæ. As a practical matter, however, I think it may be said that an absolutely binding precedent differs from an ordinary precedent solely in the fact that it is laid down by a court to which appeal lies from the court in which the precedent is cited as authority. The flexibility of treatment to which an ordinary precedent is always subject is cut down through the institution of appeal. By this means the precedent-making court may correct the precedent-following court on the very facts which precipitated the controversy.

We may say, if we like, that the precedent becomes absolutely binding in the eyes of the lower court by virtue of the law of anticipated reactions.[7] But, regardless of the explanation offered, there are certainly no examples in American jurisprudence of absolutely binding precedents except as between superior and inferior courts related as such by the institution of appeal. Since federal courts are never so subordinated to state courts, we can afford to be doubtful whether the bare concept of absolutely binding precedent will help to attain the end of certainty which the supreme court has in mind in this situation.[8] Once we remove the availability of appeal from the horizon of common-law judges, all the familiar devices by means of which new law is distilled from nominally controlling old law may be counted on to assert themselves. Precedents do not need to be overruled for this purpose; they need only be "distinguished." Thus, while I do not doubt that lower federal courts may be held pretty close to the Supreme Court's interpretation of state common law, I do not see how the Supreme Court itself can be expected to preserve more than a formal, and hence deceptive, correspondence with the state law as interpreted by state courts.

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[7] The phrase is Carl Friedrich's. See his *Constitutional Government and Politics* (New York, 1937), p. 16.

[8] Of course, all this is assuming that a relevant state rule *has been* announced by the state court of last resort. But the law may be in a much more inchoate condition than this when proceedings are instituted in the federal courts. What are the latter

But it may be maintained that we are not dealing with state decisions as precedents on the common-law pattern at all. Perhaps the law of the state is not something which has to be interpreted or declared by the federal courts in the same manner as it is found by state courts. There is much in the opinion of Brandeis, and even more in the character of his citations, to suggest that this is the underlying thought of the Court in Erie v. Tompkins. Thus, the Court is apparently joining issue with Story on the only two general propositions in Swift v. Tyson which would seem to be fundamentally sound.

The first of these propositions (or perhaps we would better call it a premise, because Story hardly regards it as necessary to affirm the point) is that state law is not foreign law in federal courts. The second proposition (and this Story *does* expressly affirm) is that state decisions do not make the law of the state—they merely declare it.

Now the majority in Erie v. Tompkins apparently hold the second proposition in more active contempt than the first. It is this proposition that John Chipman Gray singled out for incisive criticism in his classic *Nature and Sources of the Law;*[9] and it is this proposition that Holmes, among other noted jurists of bench and bar, deprecated on the same grounds.[10]

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to do if the state supreme court arrives at a different version of state law than the federal trial court after the trial court has acted? And what are the federal courts to do if the most recent state judgments are those of inferior state courts? The Supreme Court is willing to admit the obligation of federal courts to adjust themselves *instanter* to what a state court of last resort does—even if the decision in question is announced subsequent to federal trial but before the federal case is finally disposed of on appeal. Vandenbark v. Owens-Illinois Glass Co., 61 Sup. Ct. 347. But what the obligation of the federal courts may be with respect to the interpretations of state law by inferior state tribunals is not clear. As Professor T. R. Powell has put it, "Are the federal courts to take their state law from a justice of the peace?"

[9] 1st ed., New York, 1909.

[10] Brandeis' documentation is, as usual, beautifully complete. Both the supporters and the opponents of his position are neatly inventoried via foot-notes to the opinion. Without disparaging the quality of the commentary on Erie v. Tompkins which has already appeared, it may be said that the earlier literature assayed

But, before asking ourselves how much there may be in this type of criticism, something ought to be said of the closely related, if more subdued, attack on the first proposition. Of course, the idea that state law is foreign in federal courts is suggested by the fact that the principles of conflict of laws are applied by state courts when called on to apply the law of other states. Under these circumstances, it is no doubt true that the decisions in another state do not lend themselves to the same degree of manipulation as local decisions. Whether this is because the law of another state presents a question of fact for local courts or for some other reason, we need not inquire. After all, the relation of courts in state A to courts in state B can hardly be compared with the relationship between state and federal courts. At least it must be recognized that up to the present attempts to carry out any such analogy are completely out of accord with both the theory and practice of this relationship.

It has never been suggested, so far as I know, that the obligation of state courts to interpret and enforce the constitution of the United States is any different from the obligation of federal courts. And, since 1816,[11] it has never been suggested that state decisions on constitutional questions are not to be corrected by the federal Supreme Court in substantially the same way that decisions of the lower federal courts are corrected. Moreover, it has been almost equally well established that state courts are appropriate tribunals for the interpretation and enforcement of federal statutes when the occasion arises. In our early days, as is well known, Congress treated the state courts as substitutes for the federal courts in the exercise of much Article III jurisdiction. And I should say that the present tendency to concentrate federal business in federal courts may still be described as a matter of convenience rather than of principle.[12]

As for the converse situation of state law in federal courts, the occasions are so frequent that a federal district judge who disclaimed knowledge of the law of his state would be regarded as vitally deficient in professional qualifications. Certainly a large part of the jurisdiction conferred on federal courts in the Judicial Code would be incapable of exercise without constant reference to and interpretation of state law. And federal courts have always, I think, had no hesitation in construing such law quite independently of state courts.

It is true that there is a tendency to defer the exercise of federal jurisdiction designed to test the validity of state police legislation until a state court of last resort has defined the challenged statute.[13] But this is really

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by Brandeis had already explored the various facets of the problem to which the former adverts.

[11] Martin v. Hunter's Lessee, 1 Wheat. 304.

[12] Cf. Second Employers' Liability Cases (1912), 223, U.S. 1.

[13] Injunctive relief against the enforcement of a state law will be granted by federal courts only with great caution.

a different story. As I shall point out later, it is natural for federal courts to adopt an entirely different attitude toward the exercise of essentially administrative functions by state courts in which the latter are acting as agents of the state government.[14] I am talking now about the state law upon which private rights are founded, and not about state police regulations which may violate private rights. My immediate point may be boiled down to the assertion that federal courts have always been credited with sufficient familiarity with state common law to warrant them in approaching that law with the same professional assurance as state courts. And this point really need not be labored at great length—particularly with respect to the federal jurisdiction in diversity cases. It should be enough to recall that one of the plans seriously considered for taking care of these cases was to have federal courts concerned at only the appellate level. In other words, the state courts were to have all original jurisdiction—naturally applying their own law; the federal courts were to review their determinations—as naturally applying the same law. This proposal was dropped, but not because anyone regarded the authoritative interpretation of state law by federal courts as at all incongruous.

Standing alone, therefore, I should conclude that the idea that state law is foreign law for federal courts is not a very persuasive basis for Erie v. Tompkins. In fact, it is unlikely that Swift v. Tyson would have been overruled had the problem been so baldly stated. We need to bring in the neo-Austinian version of the judicial function supplied by Gray in order to see why the Supreme Court has come to regard federal manipulation of state decisions as fundamentally bad. For purposes of the present question, Gray is supposed to have demonstrated that judges make the law instead of simply declaring it. Moreover, it was Story's bad professional fortune to have his somewhat fumbling remarks in Swift v. Tyson singled out by Gray as an egregious example of the contrary doctrine. Thus, many constitutional lawyers have been persuaded that the unfortunate results of Swift v. Tyson could have been avoided had Gray's realistic approach to the judicial function been adopted by the Supreme Court on that occasion.

As a matter of fact, however, Gray's doctrine of judicial lawmaking is not simply a "within-the-gaps" theory. He is bent on establishing the self-sufficiency of the judicial process for lawmaking to the exclusion of the legislative process. This means that *interpretation* of any preëxisting generalization must be emphasized as *the* efficient instrument of lawmaking. It means also that previous judicial decisions (as a form of generalization) must be denied the quality of law—at least from the viewpoint of a court asked to apply them in a subsequent case.

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[14] The conclusiveness of state court construction of such state legislation is a reasonable principle because the legislation is envisaged by the federal Constitution as governmental regulation which may or may not be legal. In other words, courts approach an exercise of police power, not as a statement of law, but as an exercise of authority which may or may not be in accordance with law. State court construction of local statutes under such circumstances is, therefore, not subject to federal correction, because it is not a question of law which the state court has decided. It would be as inapposite here for the federal courts to "correct" the state courts as it would be for them to correct the state legislatures or executives.

Thus it is obvious that Gray could have been used quite as effectively to support federal courts in playing fast and loose with state decisions as he was used to support the contrary doctrine. In other words, what Story actually did in Swift v. Tyson is in perfect accord with Gray's doctrine that precedents are only sources of law. What Gray would have had him do, on the contrary, is something which, according to that distinguished scholar, courts never do, i.e., merely reflect or declare the law established in a precedent laid down by another court. Curiously enough, therefore, Erie v. Tompkins presents the droll spectacle of the Supreme Court renouncing for itself a theory of judicial decision which it ascribes to state courts on grounds of general juristic doctrine. Or, if we prefer to credit the Supreme Court with consistency in its definition of judicial function, the Court stands self-convicted of not performing a judicial function when it decides cases arising under state law.

This is alarming enough, to be sure, but it is still not so disturbing as the conclusion to which we must come if the Court's definition of judicial function is taken in conjunction with its assertion that the decision in Swift v. Tyson was unconstitutional. If the Supreme Court's interpretation of the Constitution can be unconstitutional, certainly the Court cannot have been exercising the judicial function of making the law when it interpreted the Constitution. Poor Story might well complain that he is being damned in one breath for failing to recognize that judicial decisions make law and in the next breath damned for breaking the law in his own judicial decision.

The little excursion into legal realism which the Court has permitted itself in the instant case may suggest to some that the results to be expected may not be altogether happy. Perhaps traditional ideas of the nature of law are no more absurd—at least as methodological devices—than the newer ideas which, as the late Justice Cardozo once demonstrated, usually issue in a denial that there is any law at all, but only a mass of isolated judgments.[15] Of course I am not asserting that the present Supreme Court has deliberately and consciously adopted any such iconoclastic position. But the Court certainly does seem to be carrying on a mild flirtation with certain "enlightened," but ill-digested, ideas about the nature of the institution it serves.

To come back, however, to the problem of centralization v. decentralization in the light of the foregoing remarks: Apart from the very mild decentralization involved in securing acceptance of state-created rules in federal courts, is any decentralizing effect to be attributed to the theory of law under which this result is to be accomplished? I think there is. When we assign a positive lawmaking quality to judicial decision, we also relate judicial decision to those positive acts of governmental agents which, under the division-of-power system, are ascribed to federal and state governments respectively. In other words, courts, like legislatures and executives, must be assigned to one or the other of these governmental hierarchies.

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[15] *The Nature of the Judicial Process* (New Haven, 1921), p. 126.

The traditional conception of judicial function that courts declare the law *about* government rather than being themselves agencies *of* government has operated to place both federal and state courts above the governmental distribution of power. Our courts deal with one another's opinions as efforts to state the law; they do not regard any judicial opinion as in itself either a violation of the law being administered or an illegal encroachment on a sphere of law prohibited to the court making it. In short the unity of our courts has always contrasted sharply with the disunity of other political agencies. In a very real sense, judicial organization transcends the lines of political cleavage established between the governments or governmental agencies of the country. And this feature of judicial organization has, I believe, contributed very materially to the success of our federal experiment.

The assumption made by Brandeis that an exercise of discretion by federal courts in the statement of local law would be equivalent to an exercise of federal congressional power in the same field constitutes an indirect blow to this conception. So, too, does his assumption that state decisions are in all respects like statutes in their expression of a separate governmental will of the state.

Fundamentally, I suppose it may be said that the two assumptions are equally decentralizing, in that they tend to deprive our constitutional system of a source of national unity at the judicial level. But the second opens up a kind of centralizing tendency as well, because, if decisions of the state are like statutes of the state, it would seem to follow that constitutional limitations on the exercise of state police power may very well be applied to state decisions.

In this connection, we may recall the famous municipal bond cases in which the Supreme Court protected bondholders against state decisions invalidating the bonds on the ground that these decisions impaired the obligation of contracts.[16] The state courts had, of course, reversed themselves in the interval between the purchase of the bonds and their due date.

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[16] The principal reference is to Gelpcke v. Dubuque (1864), 1 Wall. 175.

I am aware that the Supreme Court has since explained these bond cases as examples of the freedom of federal courts to disregard state decisions which do not properly state the law.[17] Thus, in order to avoid an admission that changes in state decisions operate as police-power restraints on vested rights, the Court has only recently extended the Swift v. Tyson doctrine further than Story did. For Story did not, as we know, claim any latitude for federal courts in the matter of state court constructions of *statutes*.

It is not feasible here to go into this fascinating chapter of judicial squirming in the grip of opposing theories of law. I do suggest, however, that Erie v. Tompkins seems to open the door to a renewal of this struggle. Why, it may be asked, if it is now established that state judicial decisions *are* laws, should not the federal constitution be construed to prohibit the state courts from developing their common law in such a way as to defeat the expectations of creditors? No doubt the wording of the contracts clause may still be relied on to avoid a decision on the merits of this question, but certainly the due process clause would seem now to have been given a potential coverage not anticipated by the framers of that clause. To conclude on this point, the positive conception of law as applied to state judicial action, combined with an all too idealistic conception of law at the national constitutional level, could easily put the law of property in permanent "hock" to vested interests of all kinds.

It would be a mistake to close this paper without indicating that I am mindful of the discrimination which has resulted from the application of different rules by the federal courts from those applied by state courts. A Black and White Taxi case, for example, certainly gives us something to worry about. And I do not suggest that all possibilities for divergence between the rules adopted by federal courts and those adopted by state courts would be eliminated if only the former would drop the common law of the United States idea. It is true that the result in the Black and White case itself could hardly have been arrived at without this concept. Here, a "settled course" of Kentucky decisions, contrary to the federal rule, was admitted by all parties. Nevertheless, it would be futile to contemplate an independent power in the federal courts to declare even the *state* law, as other than a symbol of diversity. And I do not defend this viewpoint.

My argument is, first, that Erie v. Tompkins will not cure the situation. If we are really to achieve uniformity based on state action, the only satisfactory way is to relieve federal courts from all jurisdiction in the premises. If, on the other hand, we want to get uniformity based on federal action, we ought to adopt the more far-reaching expedient of allowing an appeal to the federal Supreme Court from a decision of the highest court in the state, wherever the latter fails to follow a precedent established by the former. This would, of course, mean that the general course of state judicial decisions in the development of all private law would be subject to surveillance by federal judges. I realize that such a proposal stands slight chance of prevailing at this date. But it is at least worth mentioning for the benefit of those who believe that Erie v. Tompkins, despite its shaky theoretical foundations, is the only way to end the present conflict of laws while retaining federal jurisdiction.

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[17] Through Taft, C. J., in Tidal Oil Company v. Flanagan (1924), 263 U.S. 444.

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Executive Responsibility to Congress via Concurrent Resolution. A clause reserving to Congress the right to terminate by concurrent resolution (which has not for over a century and a quarter been submitted for presidential approval) powers delegated to the President or a department head appears in so many acts of the Seventy-seventh Congress that further consideration of its political and constitutional aspects seems appropriate.[1] If its constitutionality is established, this clause enables a majority of both houses, when dissatisfied with executive conduct of any of these delegated powers, to terminate them. Leaders of the present administration, in Congress and in the executive branch, are aware of this possibility. Supporting the measure to extend the draft period, its author, Senator Elbert Thomas, said: "Broad authority is conferred by the measure, but that authority is expressly subject to revocation at any time by concurrent resolution of the Congress."[2]

Since the exercise of powers delegated in the "Lend-Lease," Emergency Price Control, most titles in the first and second War Powers, and several other acts[3] is subject to termination by concurrent resolution, the American executive's relation to Congress in the management of the war may become, if it is not already, similar to that of the British cabinet's relation to the House of Commons, to the extent that its exercise of powers may be ended at any time by an adverse vote. Conceivably, this relationship may be tested if there arises widespread popular dissatisfaction with executive direction of the war effort. Perhaps the only reason it has not yet been tested is the tendency of preponderant popular support to swing to the President whenever the two branches disagree on military and fiscal policies. It may be surmised, however, that some of the current uncertainty and confusion in administering war-time legislation arises from a realization by executive officers that a majority in Congress retains the right, without presidential approval, to withdraw the delegated powers at any time.

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[1] See this REVIEW, Oct., 1941, pp. 886–889, and Apr., 1942, p. 301, for previous comment.

[2] *Cong. Rec.*, July 30, 1941, p. 6580. In a letter to the writer, Dr. Floyd M. Riddick says that "several departmental drafts submitted to Congress for enactment contained clauses providing for termination of law by use of concurrent resolution (for example, the Second War Powers Act and the Acquisition of Property Bill)."

[3] Powers granted in specified titles or in entire acts are subject to termination by concurrent resolution in *Public Laws* of the 77th Congress as follows:

No. 11, sec. 3 (c). March 11, 1941. The "Lend-Lease" Act.
114. June 21, 1941. Presumably, since "until otherwise ordered by the President or Congress."
213. Aug. 18, 1941. Service Extension Act.
354. Dec. 18, 1941. First War Powers Act.
403. Jan. 20, 1942. Daylight saving.
413. Jan. 26, 1942. Amends sec. 606, Communications Act of 1934.
421. Jan. 30, 1942. Emergency Price Control Act.

Congress did not establish this potentially significant check in one abrupt step. In the first two laws containing a concurrent-resolution clause, it did not reserve a right to terminate; instead, the Executive was required to submit plans which would go into effect after the lapse of a specified period unless in the meantime a concurrent resolution were passed declaring them unsatisfactory. This was the procedure under which powers to reorganize the executive and administrative agencies were granted to President Hoover in 1932[4] and President Roosevelt in 1939.[5] Then came the Neutrality Act in 1939, whose provisions were to go into effect after a presidential proclamation. It was to be issued "whenever the President, or the Congress by concurrent resolution, shall find that

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450. Feb. 10, 1942. Overtime for certain employees ("unless the Congress shall otherwise provide").
482. Mar. 6, 1942. Amends Merchant Marine Act of 1936. (But No. 523, April 11, amending same act, "or until such earlier date as the President may designate.")
507. Mar. 27, 1942. Second War Powers Act.
535. Apr. 29, 1942. Flying hours of air pilots.
580. June 5, 1942. Sundry military establishment matters.
603. June 11, 1942. Promotion of small business.
610. June 16, 1942. Certain emergency laws relating to the merchant marine extended.
638. June 30, 1942. Authorizing the control of the exportation of certain commodities.
643. July 2, 1942. Amending authorization to requisition certain articles and materials.

[Dr. Floyd M. Riddick has helped in preparing this list.]

[4] *Public Law* 212 (72 Cong.), Part II, Title IV, sec. 407, June 30, 1932.

[5] *Public Law* 19 (76 Cong.), Title I, Pt. 1, sec. 5 (a) and pt. 2 entire, the latter prescribing in detail the form a concurrent resolution pursuant to the act shall take "as an exercise of the rule-making power of the Senate and the House of Representatives, respectively. . . . "

there exists a state of war between foreign states . . . ."[6] Next, the Attorney-General was obligated in the Alien Registration Act of 1940 to deport immediately any alien whose deportation had been suspended more than six months if "the two Houses pass a concurrent resolution stating in substance that the Congress does not favor the suspension of such deportation."[7]

Facing the necessity of delegating important powers to the executive, the Seventy-seventh Congress took these imperfect precedents and developed the practice of delegating powers for defense and for the nation's war effort, with the proviso that they shall terminate either six months after the end of the war, or at a date specified in the act, or (in addition to one of the foregoing) "until such earlier time as the Congress by concurrent resolution or the President may designate."[8]

At first glance, these clauses may seem unconstitutional, since the Constitution requires that "every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States . . . ";[9] but there is a long-established practice against submitting concurrent resolutions for presidential approval.[10] Even so, the custom might be overturned, when such resolutions are used to terminate laws, if there were not weighty reasons for its continuance.

First, the laws containing this clause were approved by the President. A presidential statement pointing to "the constitutional question involved in the passage of a concurrent resolution, which is only an expression of congressional sentiment," was read in the course of congressional debates,[11] but the President has not vetoed any of the measures in which Congress retained the right to terminate a grant of powers. Even more persuasive is the fact that the Administration's leaders, beginning with Senator Elbert Thomas in the Service Extension Act of 1941,[12] reported out of their committees bills with the concurrent-resolution clause already incorporated. Opponents are thus deprived of an opportunity to show their greater zeal in resisting executive usurpation, and their objections to granting more powers to the President are answered by pointing to the check which Congress holds on the grant.

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[6] *Public Res.* 54 (76 Cong.), Nov. 4, 1939. Professor J. H. Leek called the writer's attention to this use of the concurrent resolution.

[7] *Public Law* 670 (76 Cong.), June 28, 1940. Title II, sec. 20 (c).

[8] *Public Law* 354 (77 Cong.), Dec. 18, 1941. Title IV, sec. 401.

[9] Art. I, sec. 7.

[10] A. C. Hinds, *Precedents of the House of Representatives*, IV, sec. 3483.

[11] 84 *Cong. Rec.*, 2479, Mar. 8, 1939. Entire letter in 83 *ibid.*, 4487.

[12] *Public Law* 213., Aug. 18, 1941. Senator Thomas' remarks, *Cong. Rec.*, July 30, 1941, 6580.

Termination by concurrent resolution is more likely to be provided in measures whose passage, on a preliminary survey, appears doubtful.[13] Without this provision, the Service Extension Act of 1941 would probably not have received even the 203 to 202 vote by which it passed the House.[14] Sometimes, as in the act to mobilize the productive facilities of small business, the reservation is not inserted until the bill reaches the second house and encounters unanticipated opposition.[15]

Whether Congress reserves the right to terminate delegated powers in this manner may thus seem to be solely a question of political expediency. It may be argued that the Supreme Court would ignore such considerations if a case should arise in which it must pass on the constitutionality of this use of the concurrent resolution. This argument is not conclusive. The Court may hold that, since the executive accepted this condition, it is bound to accept the consequences. Moreover, if the Court were to hold that a majority of the two houses cannot terminate the delegation, the President is likewise estopped. For the clause usually reads: "or until such earlier time as the Congress by concurrent resolution or the President may designate."[16] Legislation would therefore have to remain in force either until some specified date[17] or until repealed by a subsequent law.

Whether Congress is limited to these latter means of terminating legislation depends upon the answer to the question, Can a law cease to be a law by any form of action which is not itself legislative? For the negative, Senator Murdock declared: "We have in this provision . . . the unconstitutional provision of delegating to the President the power to repeal this act; and side by side with it we have the other unconstitutional provision of reserving to the Congress . . . the right, by concurrent resolution, to terminate the legislation and thereby deprive the President . . . of his power of approval or disapproval."[18] Opposing the provision in another bill, he said: "We talk . . . about granting under the bill unlimited powers to the President . . . and to others in the executive department, but under this bill the greatest power that we grant to the President is the power to terminate the act whenever he shall see fit to do so."[19] According to

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[13] "Perhaps it will be necessary for the executive power of the Government . . . to make this concession in order to get the bill passed. . . . " Senator Murdock, 87 *Cong. Rec.* 1596, Mar. 1, 1941.

[14] *Cong. Rec.*, Aug. 12, 1941, 7227.

[15] *Ibid.*, June 2, 1942, 4951, for Conference Report.

[16] *Public Law* 354, sec. 401. But *Public Laws* 213, 403, and 413 provide for termination at any time only by concurrent resolution. For reverse, see above, note 3, comment on 523, following 482.

[17] *Public Law* 421, Jan. 30, 1942. "Shall terminate on June 30, 1943, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two houses of the Congress. . . . "

[18] 87 *Cong. Rec.* 1596, Mar. 1, 1941.

[19] *Cong. Rec.*, Jan. 28, 1942, 809.

Senator Wheeler, "a real doubt is raised as to whether the President's veto power is not being circumvented in a manner not countenanced by the Constitution." "But I think," he concedes, "the committee chose the best method open to it for accomplishing the desired result."[20] Representative Jerry Voorhis said that "where extraordinary powers are being granted by Congress to the Executive, . . . from the standpoint of simple equity and policy it seems to me to be quite defensible for Congress to provide that it can take back those powers without the President having to approve such action."[21] Senator White regarded "the provision as an attempt to define the grant of power. I think upon that basis it is a legitimate and constitutional effort on the part of Congress."[22] Senator Connally was certain of its constitutionality. "That puts it in the bill itself—not in a resolution, subject to the veto power of the President—that it shall terminate. In other words, it has no longer any vitality or effect after the occurrence of this happening or this event. We could just as well have fixed any other determinable event."[23]

Senators Gillette and Murdock did not deny Connally's argument except to insist that the "determinable event" or "the contingency specified could not be an illegal happening or an unconstitutional happening" and "under the constitutional provision the passage of such a concurrent resolution would be an unconstitutional act, in changing an act of Congress."[24] In other words, they were unwilling to say that Congress can terminate legislation only on a date specified in the original act or by the passage of a repealer. If Congress can put into a law any provision for its termination on the occurrence of some contingency, surely it can make the law terminable by a presidential proclamation or by the congressional equivalent, a concurrent resolution.

The plausible explanation that the President has accepted so much legislation terminable at the pleasure of a congressional majority because he did not want the war effort to be "too little and too late" may not be the major reason. Quite possibly he sees the broader democratic implications. He and the leaders of both parties in Congress who have supported the Administration's measures have been confident that the majority will continue to support action pursuant to the authority granted by the laws. If a majority were to withdraw its support, the authority should no longer be exercised. If its exercise were continued, democratic procedure would be flouted. The President and congressional leaders may see in this extension of the concurrent resolution into a new domain a wholly justifiable move on the part of Congress to add a counterweight on its side to balance the extensive powers which the grave national emergency requires shall be entrusted to the President. As Senator O'Mahoney said: "After all, war is an executive function; it is not a legislative function."[25] The Congress merely asks the executive branch to recognize its responsibility to the representative assembly which gives it the authority to act. Just as a majority in Congress felt impelled to defend the Supreme Court, which had been annulling many of its laws, rather than support presidential proposals for judicial reorganization, because it feared the growth of executive power, so a Supreme Court may some day find, in the spirit if not in the letter of the Constitution, authorization for the means which Congress employs to maintain its place among the three coördinate branches of our constitutional system.

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[20] 87 *Cong. Rec.* 1596.

[21] From a letter to the writer, Dec. 17, 1941.

[22] 87 *Cong. Rec.* 1596.

[23] *Ibid.*, 1597.

[24] *Cong. Rec.*, Jan. 28, 1942, 809.

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The Report of New Jersey's Constitutional Commission. The *Report of the Commission on Revision of the New Jersey Constitution* (Trenton: May, 1942, 59 pp.), as conditioned by the peculiarities of the state's governmental environment, is conventional in philosophy but unique in many particulars. It recommends a new state constitution, which is set forth in full—a proposed constitution relatively short, and showing some rigidity in legislative organization and procedure, but ample flexibility in its executive and judicial provisions.

The two outstanding characteristics of the proposed new constitution are its pronounced emphasis, first, upon positive restriction of the legislature to policy-making functions, and second, upon the identification of administrative responsibility through appropriate structural organization. Judicial reform has been the motivation for constitutional revision in New Jersey for over fifty years, and in recognition, the new document supplies a complete reorganization of the judicial system.[1]

The primary emphasis upon confining the legislature to purely policy-making functions is immediately evident in the legislative article. While legislative terms of office are extended and salaries increased, the really significant changes occur in what in other states might be viewed as minor provisions. Because of a long-standing precedent of Republican legislatures and Democratic governors, the legislature has come to take over a continually greater share of control of administration. Disruptions, and even stalemates, of the legislative process that have occurred in the course of disposition of the resulting legislative patronage have overshadowed the older issues of legislative organization. For this reason, it will be with the greatest difficulty, if at all, that three new provisions, which should effectively bar any direct legislative participation in administration, will survive the test of legislative acceptance. These would (1) prohibit any executive, administrative, or judicial appointments from being made by the legislature or by either house; (2) make members of the legislature ineligible for any appointive office during the term for which they were elected and for one year thereafter; and (3) require the senate to confirm or reject gubernatorial nominations within thirty days.

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[25] *Ibid.*, Jan. 26, 1942, 653.

[1] An excellent brief summary of the historical development of the New Jersey judicial system, by Arthur T. Vanderbilt, is contained in the *Report of the Judicial Council of New Jersey Pursuant to J. R. No. 16 of the 155th Legislature* (1934), pp. 18–42. Compare Charles R. Erdman, Jr., *The New Jersey Constitution—A Barrier to Governmental Efficiency and Economy* (1934), Appendix, Item 9, which enumerates attempts at judicial reform through constitutional amendment.

Less desirable, but more palatable to the professional politician, is a recommended change from the present annual sessions of unlimited duration to biennial sessions limited to ninety days, except that a special session might be called for a single stated purpose in the interim. This is probably the one regressive step recommended by the Commission.[2]

Practical political history demonstrates, it will be admitted, that continued presence of the lawmakers at the state capitol seriously hampers the administrative process and tends to demoralize the legislative process. In the administrative sphere, the constant presence of the legislature produces much legislative action that properly belongs on the administrative level, and thus defeats the development of administrative initiative and imagination. From the legislative viewpoint, annual sessions of unlimited duration cultivate a casual attitude toward legislative procedure, and have produced in New Jersey the custom, which is not always followed, of restricting meetings of the legislature to Monday evenings. In addition, constant presence of the lawmakers at the capitol tends to unsettle large segments of the population having vital interests, not necessarily inconsistent with the general public welfare, in the maintenance of the legislative *status quo*.

From the fiscal viewpoint, however, it is as impossible to rationalize the choice of biennial sessions in New Jersey as elsewhere. It hardly needs to be demonstrated that one of the chief reasons for failure of state budgeting to achieve the success of some cities lies in the necessity of anticipating revenues and expenditures over a two-year period occasioned by the biennial session.[3] It is problematical whether this loss of fiscal control by the legislature would be offset by gains in legislative procedure, administrative responsibility, and group serenity. The Commission was apparently of the opinion that the balance of values would be favorable.

The continuous nature of the legislative process is recognized, despite the provision for biennial sessions, by provisions which establish a legislative council. The governor is made a member of the seven-member council, and the sponsors apparently hope in this way to bridge the usual gap of partisan differences between the New Jersey legislative and executive branches of the state government. Unfortunately, there is nothing in the experience of any of the legislative councils that have operated in other states, by legislative establishment, to warrant any optimism on the score of gubernatorial coöperation with the legislative council.[4]

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[2] Cf. *Model State Constitution* (1941 ed.), Sec. 307, which provides for continuous sessions of the legislature.

[3] J. Wilmer Sundelson, *Budgetary Methods in National and State Governments* (Sp. Rept. of the N. Y. State Tax Commission No. 14, 1938), Chap. 35.

With reference to the executive branch, the proposed constitutional provisions would be the first in any state to place responsibility for, and power to achieve, administrative reorganization in the chief executive. No other state, including New York, now confers administrative powers which approach in magnitude those that would be conferred under the Commission's recommendations.

At the present time, the state treasurer and the state comptroller, by virtue of constitutional provision, and the state auditor, commissioner of motor vehicles, commissioner of alcoholic beverage control, and the director of municipal aid, by virtue of legislative provision, are elected in joint meeting of the legislature. Other administrators, such as the commissioner of local government, have been designated by name in the legislation which first established the office. The present constitution also places the attorney-general, secretary of state, and keeper of the state prison beyond the authority of the governor by endowing them with five-year terms of office in contrast with his term of three years. The same device appears in offices established by legislative authority. In addition, the secretary of agriculture and the commissioner of institutions and agencies (the latter one of the most important administrative posts in the state) are appointed by boards over which the governor has no effective control.

The state treasurer and state comptroller, under the Commission's recommendations, are specifically left to be appointed in joint meeting of the legislature, apparently for the purpose of providing that body with a check upon the expenditures which it authorizes in its appropriations. It would be fruitless to seek reasons to justify legislative appointment of both the treasurer and comptroller for this purpose.

In addition to these two fiscal offices, nine departments are established and designated as Agriculture, Commerce, Education and Civil Service, Labor, Law, Public Works, Social Welfare, State, and Taxation and Finance.

The governor is empowered and required to allocate, by executive order, all existing administrative departments, agencies, and offices among and within these eleven establishments. The legislature may create new agencies, but upon creation they would be subject to allocation in the same manner by the governor.

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[4] See Maryland State Planning Commission, *Legislative Councils* (Publication No. 21, 1939), pp. 37 ff.

Functions, powers, and duties of the various agencies, although defined by statute, may be redistributed by the governor, by executive order, "in such manner as to promote efficiency and economy in the operation of the state government, and to group, coördinate, and consolidate the offices, agencies, and instrumentalities thereof according to major purposes, as nearly as may be." While the governor is given free rein as to allocation of agencies, his orders allocating functions, powers, and duties are made subject to absolute veto by concurrent resolution of the legislature within thirty days.

These striking powers of the chief executive obviously borrow heavily from the youthful federal Reorganization Act of 1939. To the extent that they presage the development of a practice of administrative amendment of legislation, they have fortifying precedent in the long-established judicial rule-making power,[5] and in English administrative experience.[6]

The nine departments established in the proposed constitution may be headed either by a single or a plural executive. In either event, however, the head of the department must, under the terms of the constitution, be appointed by the governor and serve at his pleasure.

Upon analysis, these provisions give adequate expression to Mr. A. E. Buck's six standards of administrative reorganization. It cannot be said, however, that the proposed new constitutional provisions reflect participation in the state reorganization movement as such. While New Jersey has had more than its share of unsuccessful attempts at reorganization of its present more than ninety agencies, departments, commissions, and other offices, the proposed new provisions are directed primarily toward achieving responsibility rather than efficiency in operation.

The provisions of the new executive article may, of course, preface significant functional integration, but they should not occasion any real issue of the case for and against centralization.[7] To those familiar with the peculiarities of the New Jersey scene, the proposals to strengthen the executive represent a choice of political values which requires a fully effective bar against legislative participation in administration. The provisions do promise at least a unification and balance of over-all administrative policy. Any efficiency in operation that may follow would be a welcome but incidental result.

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[5] E.g., *New Jersey Practice Act of 1912*, sec. 32, now *Revised Statutes (1937)*, 2: 27–149. 3, which provides: "Such rules shall supersede (so far as they conflict with) statutory and common law regulations heretofore existing."

[6] Sir Cecil Thomas Carr, *Concerning English Administrative Law* (1941), pp. 41–47.

[7] See the recent attempts to define the issue by John M. Gaus and Harvey Pinney, in *Annals of the Amer. Acad.*, Vol. 221 (May, 1942), pp. 33–48.

Whether or not the Commission has gone too far in the direction of executive aggrandizement, only time can tell. New Jersey is particularly susceptible to inter-party bargaining and intra-party factional clashes, largely because of the activities of the Hague Democratic organization. The result of such a possible failure of the two-party system obviously is just the kind of a situation that accounts for Mr. Hyneman's dubious thoughts upon state reorganization.[8]

There usually is, on the other hand, sufficient party solidarity in New Jersey to provide a real check upon the executive: this, at least, must have been the sense of the Commission, which was dominated by practical Republicans of the intensely anti-Hague group.

It is evident that the Commission was not unaware of the possible damage to popular control of government that might lie in its proposals regarding executive power. As protection to the legislature against management from the executive office through discreet manipulation of the veto power, a provision in the present constitution permitting executive vetoes to be overridden by a simple majority vote is retained—although a new three-day "waiting period" would be imposed. The present item veto would be strengthened, however, by a requirement of a two-thirds vote to override.

Other evidence of caution on the part of the Commission may be found in its inclusion of forceful constitutional bases for the merit system, and for citizens' suits to restrain any violation of the constitution. Of most significance in this connection is a proposed provision to restrict each governor to a single term of office. At present, Delaware, which restricts its governors to two terms, is the only state with a similar prohibition. While this provision would not permit a personal political dynasty to be created, it would not prevent the development of an heir apparent. As a governmental device, it evidences a distrust of executive authority which might cast doubt upon the whole premise of the Commission's recommendations relating to executive control over administration, were it not clear that the primary purpose is to divorce the legislature from the administrative establishment.

A similar purpose of creating independence and responsibility is evident in the proposed judicial article. A completely new judicial structure is established in the constitution with ample flexibility. The most marked characteristic of the plan is the power and responsibility it confers upon the chief justice of the highest court of the state as administrative head of all the courts, legislative as well as constitutional.[9] An office of executive director of the courts, similar to the federal director of the Administrative Office of the United States Courts, is established to assist the chief justice. Space does not permit a detailed analysis of the proposed judicial system. It is well to recognize, however, that it represents a practical adaptation of Dean Pound's unified court plan to the particular conditions of New Jersey.[10]

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[8] Charles S. Hyneman, "Administrative Reorganization," *Journal of Politics.* Vol. I, No. 1 (Feb., 1939), pp. 62–75.

[9] Cf. "Iowa Constitution Enjoins Court Supervision," *Jour. of Amer. Jud. Soc.*, Vol. 25, No. 6 (Apr., 1942), pp. 184–186.

In conclusion, a word is necessary as to the unique method recommended for adoption of the proposed constitution. The legislature is advised by the Commission first to seek a mandate from the people to submit a new constitution. Upon approval of this step by the qualified voters, the legislature shall, by law, approve a new constitution (inferentially, of course, the new document recommended by the Commission) and submit it to a popular referendum for acceptance or rejection as a whole.

This method of constitutional adoption, best described as the legislative revision method, as distinguished from the constitutional convention and specific amendment methods, is not difficult to sustain in theory. The New Jersey legislature, in a juridical sense, has always enjoyed parliamentary status. As such, it may be deemed competent to initiate the process of constitutional change reserved by the people in the present constitution, which otherwise recognizes only the method of specific amendments. The relevant present provision, contained in the article on "rights and privileges," recites that "all political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it." In view of this language, it would be improper to construe express mention of the method of specific amendments to exclude, by implication, any other method by which the people may "alter or reform" their government.

The preliminary mandate to submit a new constitution certainly overcomes any difficulty in reconciling the position of the legislature as a functional instrumentality under the constitution and as a constituent assembly to "alter or reform the same." In a practical sense, the proposed method not only avoids the expense of a convention, but offers the only realistic approach to constitutional revision in face of the adamant refusal of rural senators, who have blocked legislative authorization of a convention, to risk the effects it might have upon the present basis of legislative representation. The Commission's proposal nicely avoids this pitfall by giving advance assurance that the existing bicameral plan and representative basis will remain undisturbed.[11]

In summary, the report of the Commission evinces a most adroit practical application of theoretical politics to the peculiarities of government in the New Jersey environment. Like most other measures that at once challenge too many vested interests, however, it is destined to prove abortive unless it is able to capture popular imagination and momentum.

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[10] See Roscoe Pound, *Organization of Courts* (1940), Chap. 7.

[11] See John Bebout and Julius Kass, "How Can New Jersey Get a New Constitution?," *University of Newark Law Rev.*; Vol. 6, No. 1 (Mar., 1941), pp. 1–69, for a thorough review of problems of obtaining a convention in face of refusal of the rural senators to risk its effect upon the present basis of legislative representation.

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Special Interim Commissions in the Indiana Legislative Process.* Between 1920 and 1940, the General Assembly of Indiana through resolution or act authorized no less than twenty-four special interim studies of legislative problems. In addition to these, the governor on eight different occasions set up commissions to study and report on matters of legislative concern. Diligent search has failed to disclose any evidence of activity on the part of a fourth of these commissions, but the others turned in reports averaging one hundred pages in length and at an average cost of $4,000.[1]

Aside from the thirty-two more formal authorizations of interim studies, i.e., studies to be carried on between sessions and usually, at least in part, by non-members of the General Assembly, the legislature has authorized no less than ten other investigations requiring more or less technical knowledge or assistance. In 1932, for example, a committee of four members, two senators and two representatives, was authorized to investigate the advisability of installing amplifiers in the Senate and House chambers. On another occasion, a commission of two senators and two representatives was appointed to investigate the prices paid for tomatoes in Indiana as compared with prices paid in other states. This commission was authorized to report to the governor, who would then "take whatever steps he deemed necessary."

As can be seen, on an average about two studies a year have been authorized during the last two decades. In somewhat more than one-half of these, actual studies have been made and reports submitted. In this note, attention will be directed primarily to the authorizations from which reports resulted.[2]

The study commissions during this twenty-year period in Indiana have demonstrated at least four somewhat distinct types of procedure. In the first place, where funds are provided by statute or from the governor's contingent fund, a separate staff is set up under an executive secretary, research director, or some such officer, who is charged with the actual assembling of material and preparation of the report. Individual members may take an active interest in the proceedings or else may be satisfied simply to sign the final report and receive a special leather-bound copy with their names individually embossed thereon. Secondly, members may assume responsibility for some aspect of the investigation as agreed upon or assigned by the chairman. Each individual member, with or without additional assistance from the outside, prepares a draft for his particular sub-topic; and the group considers this draft in somewhat the same manner that members of an appellate court consider a preliminary draft of an opinion written by a designated member. Under such procedure, all members of the commission are usually well acquainted with the final report, and such reports are ordinarily valuable. Another technique employed, especially for briefer reports, is for the commission to meet once or twice as a group to discuss the problem before them, or in some cases to hold public hearings at which outside citizens or groups are asked to appear and present their ideas on the subject. Afterwards, a member of the group is asked to prepare a résumé of the ideas put forward in these preliminary meetings. This draft forms the basis for future discussions by the members meeting as a group. Eventually, agreement is reached on the final draft of a commission report. A fourth type of procedure, and one that has been employed with surprising frequency, is for an interested administrative department, or even a private organization, to "lend" the commission an employee to carry on the research and prepare the report. The actual procedure is similar in other respects to that outlined as number one above.

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* The author wishes to acknowledge the valuable assistance rendered him by Gilbert Bailey, former research assistant, in the preparation of this study.

[1] This cost figure is probably much too low. Usually no appropriation would be made to a commission, and if it spent money it was from the governor's contingent fund or other similar source. Only through an examination of all the vouchers for such funds could one discover all the expenditures. The writer, while employed by a commission, was permitted on one occasion to hire two persons to be placed on the payroll of a regular department.

[2] Eight of the studies authorized could not be found.

This officially sponsored research, comprising a body of printed matter, statistics, graphs, and tabular information covering more than 2,500 pages and costing more than $90,000, does not reflect a continuing indulgence of legislative curiosity, since the surveys, in the main, have grown out of immediate and pressing dissatisfactions. For example, the "immediate occasion" for the Survey of Joint and Consolidated Schools in 1931 was "the evidence of dissatisfaction among some schools of this type." The study of the Observance and Enforcement of Law in 1931 was prompted by an apparent evil, "the increasing prison population"; the Special Tax Study of 1935, by the "dissatisfaction with the gross income tax"; the Survey of Boards and Commissions in 1925, by "a very widespread feeling . . . that boards and commissions have been created . . . in great numbers and at enormous expense, principally for the purpose of creating jobs in payment of political debts. . . ." These studies, with respect to the specific considerations which gave rise to them, are typical. In any case, however, a particular problem was posed and an intelligent remedy sought. The ideas for these investigations usually came from sources outside the legislative body. Although not a typical one, it is of passing interest to note that the immediate cause of the legislative commission to investigate the prices paid for tomatoes was that it had been "reliably reported that the price paid for tomatoes in New Jersey during the year last past was eighteen dollars per ton, whereas the price paid in this state was nine dollars per ton."

The more general factors which have helped to precipitate officially sponsored research are less easily ascertained and described. Certain organizations with tender social consciences frequently have prevailed upon the governor or the legislature to authorize special studies, it being a tactic of such objectively-minded groups to fortify themselves with facts when they are urging reform. Similar appeals have grown out of the unhappy experiences of administrative bodies, instanced by the Indiana Revenues Study Commission, sponsored by tax administrators. It may also be that the General Assembly feels obliged periodically to temper the fanfare of oratory and the traditional law-making process with systematic study, subjecting the most expensive of state functions to the most enterprising scholarship—if and when funds are available from the governor's contingent fund. Then again it may be significant in a psychological sense that six of the surveys were called for by the 1929 session of the General Assembly. The number, but not the content, of the studies initiated in that session suggests the possibility that the legislature is more likely to resort to the methodical investigation of particular problems when problems in general are more pressing. In view of the fact that in many cases no reports were ever submitted and that no further consideration has been given to the matters, one might well conclude that the creation of a commission is a method of escape from a problem upon which legislators do not care to take a definite stand.

The faith of the legislature and the chief executive in prosaic facts and figures, in the utility of patient study, has been instanced with surprising frequency. Every legislative biennium has seen one or more studies authorized by either the governor or the General Assembly. The size of this body of research is noteworthy, especially when measured in terms of human effort. Although the specific reports range from the ponderous 772-page study of the Committee on Governmental Economy to a trifling six-page report of the Committee on Election Laws, each of the surveys, with few exceptions, embodies the painstaking work of five or more specially qualified members over a period of several months to two years. Textual material in reports is often buttressed with an impressive array of presumably reliable information in chart or graphic form. The *Indiana Education Survey* of 1923, for example, is elaborately supported by 36 charts and tables; the general *Tax Study* of 1939, by more than 150 graphs, tables, and charts; the *Report on Governmental Economy*, by 45 charts and 73 tables. Seven of the studies have drafts of proposed bills appended to them, ranging up to thirteen proposed bills in a single report.

The weight of knowledge seldom decides an issue when the interests of opposing groups compete for legislative favor, but the "argument of numbers" appears to speak more eloquently for certain unfortunate groups which have no private lobby. Here, if anywhere, it seems that factual information may act as a surrogate for practical politics.[3] The observed congeniality between research and humanitarianism is demonstrable by the present survey, eight studies having been devoted to public welfare problems and charitable and correctional services. One of the most careful surveys which the state has undertaken is contained in the *Report of the Commission on Child Welfare and Social Insurance*, published in 1920. The most persistent and expensive exploration in a particular specialized field has been done by the Indiana Committees on Mental Defectives. From 1916 to 1922, three committees spent $21,000, marshalling information and arguments on which a reasoned reform of legislative policy relating to mental defectives might be founded.[4]

Lesser studies have been made by committees and commissions on (1) Tuberculosis, 1930; (2) The Prison Problem in Indiana, 1938; (3) Child Welfare in Indiana, 1938. Somewhat akin is the *Report of the Committee on State Insurance for Workmen's Compensation*, 1938.

The most expensive function which the state as a whole performs has been the object of the most extensive inquiry. In seven years, Indiana spent more than $26,000 on the study of educational problems: $15,000 on one general survey of educational standards and facilities by the Indiana Education Survey Commission, and $11,293.94 for studies of more specific problems by (1) the Indiana Rural Education Survey Committee, 1926; (2) the Survey Committee of the State Institutions of Higher Learning, 1926; (3) the Commission for a Survey of the Problem of State Aid for Public Schools, 1931; and (4) the Joint and Consolidated Schools Survey Commission, 1931.[5]

On three different occasions since 1920, the legislature has ordered special studies of problems relating to taxation and the collection of revenue. The first *Tax Study,* published in 1935, was occasioned by the apparent dissatisfaction with the gross income tax, its chief purpose being to determine the feasibility of modifying or repealing the act. The Indiana Revenues Study Commission was interested in the possibility of establishing a single coördinate department to handle all of the revenue-collecting functions of the state. The *Report of the Indiana Tax Study Commission* of 1939, broader in scope and more permanent in character, is evidence of a genuine effort to extend knowledge of taxation.[6]

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[3] See George H. Jaffin "Prologue to Nomostatistics," *Columbia Law Review*, Vol. 35, p. 1 (1935).

[4] The first study, made in 1917, was authorized by Governor Samuel M. Ralston, who responded to an appeal from the state board of charities. Ten counties were surveyed. After the 1917 legislature had appropriated $10,000 to continue the work, the committee was reappointed by Governor Goodrich. Eight additional counties were surveyed and the second report, published March 6, 1919, was distributed widely, not only in Indiana but in most of the other states of the Union. The committee was continued by Governor McCray. The legislature appropriated $1,000 at the special session in 1920 and $10,000 at the regular 1921 session.

[5] Cost, respectively: (1) $5,810.81; (2) $4,034.22; (3) $1,106.42; (4) $342.49.

Indiana has had two interim studies on administrative organization. The first, authorized by the governor in 1925 and carried out on a small scale, aimed at the elimination of unnecessary boards and commissions and the consolidation of administrative tasks. The *Report of the Committee on Governmental Economy,* from the standpoint of sheer bulk the most ambitious study the state has made, was meant to be the basis for a reorganization of state and local administrative systems.

With the possible exception of the studies made by the Corporations Survey Commission, 1929,[7] and the Commission for Indiana Financial Institutions, 1932, which might be grouped together, the remaining surveys are miscellaneous in character, consisting of the reports of: (1) the Committee on the Observance and Enforcement of Law, 1931; (2) the Commission of Representatives of Railroads and Brotherhoods, 1931; (3) the Highway Survey Commission, 1936; (4) the Commission on the Study of Liquor Control, 1939; (5) the Commission on Election Laws, 1939; and (6) the Indiana City Manager Study Commission, 1940.

The cause and effect relationship is so obscure that the influence of this body of research as a determinant of legislative policy cannot be measured. Almost every study was made because the General Assembly, the governor, an administrative body, or a civic group recognized an existing evil. Thus the conditions which suggested a need for a change of policy already were present in the unmistakable form of general or group dissatisfaction with certain laws. The fact that no legislation resulted from an interim study does not indicate lack of success of or need for the investigation. Such a study could very well demonstrate the sufficiency of legislation, and hence contain no recommendations for statutory changes. Where changes were suggested, the modification of policy has not infrequently followed the recommendations of a special interim commission.

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[6] Copies are available of one *Tax Study* made prior to 1920. It was authorized by Ch. 114, Senate Bill 342, Sixty-ninth General Assembly, 1915.

[7] The Corporations Survey Commission has been in continuous existence since its creation in 1927, having been continued by concurrent resolution in 1929, and again in 1935, for the purpose of preparing and submitting amendments to existing laws governing corporations in Indiana.

In at least two instances, comprehensive bills prepared by such commissions and involving sweeping changes in policy have been adopted promptly with only minor changes.[8] Although other investigating committees have not been rewarded by such immediate action, their work has frequently been acknowledged in only slightly less tangible form.[9] And in the process of determining by fact-finding study whether someone's convictions are true, it is not at all unlikely that the ends as well as the means of legislative action have been further influenced at many points. A commission may find the task too great for a group with limited resources and authority. The executive-appointed Commission on the Study of Election Laws in 1938 found the laws so confusing and inadequate that it simply recommended a legislative commission to make a full and complete study of the matter.

Perhaps the real value of these studies, however, lies in the very fact that many of their carefully reasoned conclusions and recommendations, supported by evidence which in some cases probably would be more compelling today, were not immediately transformed into law. Paraphrasing a Biblical statement, one might say "a legislative prophet is not without honor save in his own generation." Some of the recommendations of the Child Welfare Commission published some twenty years ago reflect a policy more progressive than that exemplified by our present laws relating to children. The timeliness of some of the studies included here as sources of factual information is not open to question. For example, the *Report of the Commission to Make an Educational Survey of Indiana* is, according to at least one educational authority, almost as useful as when it was published in 1923. The most recent Indiana bill concerning joint and consolidated schools is only one of several examples of the direct manner in which many of the studies would have been relevant to the business of the most recent legislative session. The cost of most of the studies does not even suggest the amount of time and effort expended or their value as repositories of factual information, most of the members having served without compensation.[10] Of the twenty-four reports mentioned here, at least fifteen have relevance to recurring problems, and probably all of them possess some present-day utility. Nevertheless, it is quite certain that to a considerable extent this body of information is ignored by legislators and administrative officials.

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[8] The General Corporation Act of 1929 was modeled after the draft of an act submitted the same year by the Corporations Survey Commission, and the bill proposed after extended research by the Survey Commission of Financial Institutions became the new Financial Institutions Law of 1933.

[9] A few examples will suffice. The recommendations of the Child Welfare Commission of 1920 were, in the main, enacted into law the following year; the conclusions of the Committees on Mental Defectives from 1916 to 1922 embody the principal modifications of legislative policy with respect to the feeble-minded and the insane; the teacher licensing law of 1923 followed the suggestions of the General Education Survey Committee of that year; most of the recommendations contained in the *Report of the Observance and Enforcement of Law* in 1931 were enacted piecemeal in 1931, 1933, and 1935; the observations of the Special Tax Study Commission of 1935 were to a considerable extent reflected in the 1937 amendment of the Gross Income Tax Law; a portion of the *Report of the Highway Survey Commission* of 1936 became the Vehicle Highway Account Act of 1937; the 1939 General Assembly acted on two of the recommendations of the Committee on Child Welfare which published its report the previous year; and the recommendations of the Liquor Study Commission in 1939 were in a large measure followed in the amendments to the Alcoholic Beverages Act passed in that year.

In spite of the fact that the value of these studies depends to such a great degree on their timing and availability, there is no orderly method of publication, distribution, publicity, or custody. Several have been badly timed, being completed after the time had passed for legislative consideration of the subject-matter or too late to come effectively to the attention of the legislators. In only one instance does there seem to have been a wide distribution of the report; in at least four, it seems evident that the committees were not even aware of an earlier study in the same field. One study costing $5,000 was published by making typewritten copies, only one of which seems to be extant. Only one of several state officials consulted on the matter realized that more than four or five studies ever had been made, and no official knew with any certainty where copies could be procured.

The above point should be emphasized. The present writer has had an official connection with three of the commissions here under review. Two of them submitted reports printed in rather large volumes. The commission in each case was at an end the day when a single copy of the report was handed to the governor. In no case did the governor care to have an additional three thousand copies carted into his office. As secretary of each of the two commissions, I prevailed on a sympathetic administrative officer to lend the expiring commission storage space and mailing facilities in his official quarters. From there, copies were sent to the principal incumbent executive, administrative, legislative, and judicial officers; to the public libraries of the state; and to a hastily compiled list of citizens and organizations. No permanent office or department was under any legal obligation to keep or dispose of the remaining copies. Many people have asked how to obtain copies of these reports. Neither is more than four years old; no doubt several hundred copies of each are piled in one of the dark storerooms of the State House; but for practical purposes they are "unavailable." This experience provokes the suggestion that each resolution or statute which provides for any kind of commission should specifically charge some agency of the government, perhaps the state library, legislative bureau, or secretary of state, with the publication, custody, and distribution of the reports. Acts of the General Assembly, the Journals of the two houses, the Supreme and Appellate Court *Reports*, the *Year Book*, and the *Statistical Report* are published and distributed in orderly manner. There is no reason why the interim commission reports could not also be handled in a more satisfactory way.

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[10] The cost of the study of Governmental Economy, for example, would have been several times $5,576.53 if all the members had been paid for their services. The listed expenditure of the Study Commission for Indiana Financial Institutions would not have paid for the paper the report was printed on. When the Indiana Education Survey was made in 1923, professional services "valued at $35,000.00" were a donation of the General Education Board. Funds, clerical workers, and special tabulations often have been supplied by various operating departments. Printing costs, moreover, are paid out of the general printing fund. From the point of view of cost-accounting, it is thus impossible to determine the cost of most of the studies or to make a satisfactory comparison with the cost, for example, of a legislative council.

The surveys and studies conducted by the state have been characterized, moreover, by a disorderly manner of financing. Although the legislature has a few times appropriated funds, it commonly appeals to the governor by joint resolution to pay for surveys out of his contingent fund.[11] When it is known or becomes apparent that sufficient funds will not be available from this source, additional sums are sometimes obtained from the operating department interested in the survey or from some other source. Then again, the idea may have to be abandoned or the uncompleted study discontinued. Although a diligent search was conducted and extended inquiries made, eight studies authorized by the General Assembly since 1920 could not be found at all; and of this number, four probably were dropped for lack of funds. Speaking from experience and observation, the writer can say very definitely that a governor not in sympathy with a particular investigation can pretty well stifle it; or if he is in sympathy with it, he can give it considerable "nourishment" from his contingent fund. If there is an actual need for an investigation, the governor should not be allowed to exercise this power, which amounts virtually to an absolute veto.

It is significant that four missing studies, which seem not to have been made, were each authorized mainly or exclusively for the purpose of eliminating the confusion and uncertainty of laws pertaining to particular subjects, namely, child welfare, mining, schools, and civil procedure. In fact, although six special study commissions created by resolution since 1920 have been specifically charged with the duty of codifying, systematizing, and coördinating a particular portion of the law, the reports of only two were found,[12] indicating that a special study commission of this character is not an adequate body to undertake a codification task.[13]

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[11] In the case of eight studies, the cost could not be ascertained without running thousands of contingent-fund vouchers.

This common failure of special codification commissions is an unhappy fact, but the need for some permanent body such as a legislative council is even more urgently suggested by the fate of some studies which have been undertaken. To spend thousands of dollars on research in a particular field is an inconspicuous but none the less real extravagance; and to draft the free services of eminent men from several states is a shameful waste of human effort, unless the work is effectively timed and kept readily and permanently available. It is noteworthy that there was little legislator-participation in the making of these studies. Members of the legislative body were sometimes members of the study commissions, but in most instances they did not participate in the process at all.

States in which competent legislative councils have been established will no doubt find it unnecessary to make extensive use of interim study commissions. The very nature of the council would seem to indicate this. There may still be occasionally a need for a study independently of even the very best council. The council itself may need to be investigated! Illinois has had investigations carried on by interim commissions apparently without any contact with the Legislative Council; and of fifteen joint legislative investigatory committees created from 1939 through 1941, in only one case was reference made to the possible use of the Legislative Council in the prosecution of the investigations. In Kansas, on the other hand, we find the 1939 legislature specifically calling on the Legislative Council to investigate matters which almost certainly would have called for the creation of special interim commissions in many other states. One of these entitled, "An act authorizing and directing the research department of the Legislative Council to make a study of administrative and revenue collecting agencies . . . ," was almost identical in its purposes with a resolution the same year in Indiana creating a special commission to study the problem.

It probably could not be demonstrated that, page for page, the reports of legislative councils are made at any less expense than are the interim reports in Indiana. However, from the standpoint of certainty of a report, timeliness, availability, and sheer usefulness the former have doubtless proved superior. If a state has an abbreviated legislative session, such as the sixty-one day session in Indiana, almost all of the legislative investigatory work must necessarily be carried on in some "extra-curricular" manner. Very definitely a conclusion to be drawn from this paper is that there is a need for some kind of central office or secretariat through which legislative studies and investigations should clear. It does not necessarily follow that Indiana should establish a legislative council. There is no magic in the name. Indiana has at least three agencies already which are charged, at least in part, with the performance of functions associated with a legislative council, namely, the Interstate Coöperation Commission, the Legislative Bureau, and the Judicial Council; and one might even include the State Planning Board.

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[12] *The Report of the Corporations Survey Commission*, 1929, and *The Report of the Survey Commission for Indiana Financial Institutions*, 1932.

[13] It also may be noteworthy that the Corporations Survey Commission, which did produce in 1929 a virtual code of corporation law, has, as noted above, had a continuous existence since its inception in 1927, occupying a unique position as a kind of legislative council, but concerned only with the laws pertaining to corporations.

With the reference library which the Legislative Bureau has already, the office space it has, and its "going concern" value, it would be a simple matter to convert the bureau into an agency capable of serving as a clearing house for all legislative interim studies and of performing functions now performed by legislative councils in other states. The Bureau's research facilities would need to be expanded. This should not involve a large additional outlay. The Bureau should serve more as a coördinating agency in tapping the research facilities of the public and private universities and colleges of the state, and of state departments, including charitable, penal, and correctional institutions, and of local public or private agencies. One of the best demonstrations of the marshalling of research talent in the state was furnished by the work of the Committee on Governmental Economy, whose report was submitted in 1935.

Whether it is done through one of the existing agencies or through a legislative council to be established, there is a crying need for a coördination of legislative investigative work and a systematic method of publication, custody, and distribution of the results of the investigations made. If a report is worth printing in large quantities, it is surely worth being made available to those interested in securing copies.

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PUBLIC ADMINISTRATION

War and the Federal Service. In time of war, there is a tremendous growth in the number of federal employees. This is due both to the establishment of new war agencies and to an expansion in the activities of existing agencies whose work constitutes a part of the war effort. Coincident with the growth of the federal service in war-time is the contraction of the area from which new employees can be selected. Many persons otherwise eligible for government employment either volunteer or are drafted for military service, while others are attracted by the lure of higher salaries in industry. Thus the problem of securing and retaining the services of an adequate and efficient body of government employees becomes in time of war a far more serious one than in time of peace. It is the purpose of this article to describe the principal means which the federal government is using to obtain the additional civilian personnel needed for the present war effort.

During the eighteen months immediately preceding the declaration of war against the Axis Powers, the number of federal employees increased from 1,002,820 to 1,545,131, which represents a gain of approximately fifty-four per cent. Since December, 1941, the rate of increase has been even greater.[1] Almost every department and agency of the government has shared in this growth, although naturally the greatest increase has been in the war agencies. In the summer of 1940, only three departments and eight other agencies were classed as defense organizations by the Civil Service Commission, but by February, 1942, every department and all but eight other establishments reported defense activities.[2] The defense effort seems to have been responsible at that time for personnel increases in seven departments and seventeen other agencies, as well as for the creation of at least six new agencies.

It should be pointed out in connection with war-time expansion of personnel not only that there are new positions to be filled but also that vacancies are created through losses to the military service as well as to private industry. Civilian employees of the government are not automatically deferred on occupational grounds. There was, however, no uniform policy among federal departments with respect to requests for deferment until President Roosevelt issued the following declaration of policy on February 9, 1942:

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[1] Total employment as of June 30, 1942, was 2,207,754, an increase of nearly forty-three per cent over the preceding November. For detailed figures, see *Monthly Report of Employment, Executive Branch of the Federal Government,* issued monthly by the Statistical Division, U. S. Civil Service Commission.

[2] The only agencies reporting no defense activities were the American Battle Monuments Commission, Board of Governors of the Federal Reserve System, Board of Tax Appeals, Government Printing Office, Mount Rushmore National Memorial Commission, National Capital Park and Planning Commission, National Mediation Board, and Railroad Retirement Board.

> "1. Request for the deferment from service under the Selective Training and Service Act, approved September 16, 1940, as amended, of any officer or employee of the United States government shall be made only by the head of the appropriate department, independent establishment, or other agency, or by a person designated by such head to take such action. Such request must be made on the form or forms prescribed by the Selective Service System.
>
> "2. No such request for deferment shall be made except when the head of the appropriate agency, or a person designated by him, shall certify that
>
> (a) The officer or employee is in a position, the duties of which are clearly related to the war effort or to essential supporting activities, and that
>
> (b) The officer or employee is in a type of position listed by the Selective Service System as one in which it is difficult to obtain replacements, or a type of position in which he cannot be readily replaced except by the training of a successor through work experience for a period of at least six months.
>
> "3. The initial request for deferment will, in accordance with Selective Service regulations, be for a period of not to exceed six months. If the duties of the position occupied by the officer or employee are of a type which require work experience of less than two years to attain a reasonable competence in their performance, the appropriate agency will take immediate steps to train a successor.
>
> "4. Request for deferment beyond the initial six-month period will not be made except when the head of the department shall certify that one of the following conditions exists:
>
> (a) That to attain reasonable competence in the performance of the duties of the position occupied by the officer or employee requires work experience of two years or more.
>
> (b) That a replacement has been secured, but that a further period of training is required before the trainee is qualified to assume the responsibilities of the position.
>
> (c) That the Selective Service System has found that a shortage of persons with the qualifications required in the position exists and it has been impossible to secure a replacement."[3]

An inquiry into the number and merits of requests for deferments, which was made by a sub-committee of the Senate Committee on Appropriations in the spring of 1942, showed approximately 6,000 such requests as of March 1. The Committee found also that "a large percentage . . . were for employees 25 years of age or younger, many of whom had comparatively little governmental experience." As a result of this finding, a list of approximately 900 cases was prepared and turned over to the Selective Service System for further investigation.[4]

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[3] This statement of policy was prepared by a committee consisting of the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, the Director of the Selective Service System, and the Administrative Assistant to the President in charge of the Liaison Office for Personnel Management.

I. DOLLAR-A-YEAR MEN

In several of the war agencies, the federal government used during World War I, and is using at the present time, so-called dollar-a-year men, who are in most instances on loan from private industry. The total number of positions filled by this group is uncertain. The War Production Board reported on March 26, 1942, that it had 395 dollar-a-year men on its rolls, in addition to 140 persons who were serving without compensation, or on a so-called "w.o.c." basis.[5]

The principal reason for the employment of dollar-a-year men lies in the fact that in war-time federal control is extended into fields of business in which the government lacks competent personnel. The conversion of industry from a peace to a war-time basis and the coördination of industrial effort in order to secure maximum production within a minimum time involve a multitude of technical questions which require for their solution a utilization by the government of the technical knowledge of industrial leaders. Such persons usually do not, as is the case with regular government officials, sever their former business connections when they accept federal employment. They are simply lent to the government for the duration of the war.

In his testimony before the Senate Defense Committee on the use of dollar-a-year men by the War Production Board, Donald Nelson expressed the wish that it were possible to employ these men on a regular government salary, but stated that such a policy was out of the question. He pointed out that the type of men who were needed are earning more in private industry than the government could pay them, and that they could not sever their former connections because of financial obligations incurred upon the basis of their existing income. "Furthermore," he continued, "when we bring these men in for this war effort, we are not offering permanent careers to them. In the very nature of things, we are offering them temporary jobs. So, if we did not have any provision for dollar-a-year men, we should in every case be forced to ask these men to sever their old connections entirely to take a temporary job at salaries which might not enable them to meet their fixed obligations. In practice, then, we would usually get from industry only older men who were independently wealthy and who could therefore afford to make the break, or those who have already retired. I do not think the Congress could approve the principle of such an arrangement, and I do not think the Congress would like to limit the War Production Board to the ranks of the very wealthy in the selection of personnel."[6]

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[4] *Transfer of Employees, Conserving Office Space, Relief in Housing Conditions, and Promotion of Economy and Efficiency,* Report of a Sub-Committee of the Committee on Appropriations, Senate Report, 77th Cong., 2nd Sess. (Subcommittee Print), p. 15.

[5] *Washington Star,* Mar. 26, 1942.

The principal criticism of the use of dollar-a-year men during the present emergency has come from the Senate Defense Committee.[7] In its report of January 15, 1942, the committee alleged that the companies by whom dollar-a-year and "w.o.c." men were employed received both tangible and intangible benefits from the loan of their services to the government. These men, the report pointed out, "spend a considerable portion of their time during office hours in familiarizing themselves with the defense program. They are, therefore, in a much better position than the ordinary man in the street to know what type of contracts the government is about to let and how their companies may best proceed to obtain consideration. They also are in an excellent position to know what shortages are imminent and to advise their companies on how best to proceed, either to build up inventories against future shortages, or to apply for early consideration for priorities. They can even advise them as to how to phrase their requests for priorities. In addition, such men are frequently close personal friends and social intimates of the dollar-a-year and w.o.c. men who do pass upon the contracts in which their companies are interested."[8]

The intangible benefits said by the report to accrue to the companies lending personnel to the government grow out of the fact that "all important procurement contracts must be approved by these dollar-a-year and w.o.c. men, which means that contracts must conform to their theories of business." The principal danger lies, not in their intentional acts, but in "their subconscious tendency, without which they would hardly be human, to judge all matters before them in the light of their past experience and convictions."[9]

Criticism of dollar-a-year and "w.o.c." men in the Senate Defense Committee report led Mr. Nelson to promulgate rules governing their appointment to positions in the War Production Board. In the case of the former, the rules provided that: (1) each appointee "must be a citizen of the United States, of high integrity and good moral character, of outstanding experience and ability, qualified for a responsible administrative, technical, consulting, or advisory position, and in receipt of earned income from his current nongovernmental employment at a rate of at least $5,600 a year"; (2) "the position to which the appointment is to be made must be one requiring special business or technical knowledge and experience"; (3) "no dollar-a-year appointment shall be made to any position if, by reasonable effort, an equally well-qualified person can be found who will serve on a regular governmental salary basis"; (4) "no person so engaged shall make determinations directly affecting the affairs of the firm or company in which he is employed"; and (5) "no permanent appointment shall be made except after a thorough investigation of the proposed appointee by one of the investigatory agencies of the Government."[10]

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[6] *Investigation of the National Defense Program,* Hearings Before a Special Committee Investigating the National Defense Program, Part 10, 77th Cong., 1st Sess., p. 4028.

[7] The Special Committee Investigating the National Defense Program created by S. Res. 71, 77th Cong., and commonly known as the Truman Committee.

[8] *Additional Report of the Special Committee Investigating the National Defense Program,* Senate Report No. 480, Part 5, 77th Cong., 2nd Sess., p. 8.

[9] *Ibid.,* pp. 8–9.

The rules governing the appointment of persons on a "without compensation" basis provide that "such appointees may serve in an advisory capacity as government consultants working in the public interest and not as representatives of a private employer or industry. Any person serving on such a basis may not be permitted to assume any administrative responsibility or to exercise any authority over, or direction of the work of, executives or employees of the War Production Board."[11]

Although dollar-a-year men have been criticized by the Senate Defense Committee, they have, on the other hand, been defended by the Committee on Military Affairs of the House of Representatives. In the second interim report of the latter's Special Committee No. 3, which was made on February 11, 1942, it was stated that "while it is true that the dollar-a-year man may retain his interest in certain firms and corporations, the committee believes that in by far the greater majority of cases his loyalty to Government interests has remained unaffected, and that the services rendered to date by the dollar-a-year men have been extremely useful and in many cases indispensable to the conduct of the war program." This conclusion was reaffirmed by the Committee on Military Affairs in its interim general report of June 23, 1942, at which time it was further stated that "the committee feels that in most instances men drawn from industry, whether as dollar-a-year men or compensated for their services, have rendered valuable, sincere, and conscientious service to the war effort. They have brought to the production program a wealth of knowledge and experience the necessity of which should be obvious. It cannot be expected that such men should sever all connections with the business world; nor should they be subjected to criticism or suspicion solely because of existing or former industry connections."[12]

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[10] War Production Board, General Administrative Order No. 4, quoted in Investigation of the National Defense Program, Part 10, *op. cit.*, pp. 4253–4254.

[11] War Production Board, General Administrative Order No. 5, quoted in *ibid.*, pp. 4257–4258.

[12] *Interim General Report of the Committee on Military Affairs*, House Report No. 2272, 77th Cong., 2nd Sess., p. 259.

These conclusions were reached as a result of an investigation by the committee of charges made by Robert R. Guthrie against the dollar-a-year men at the time of his resignation as Chief of the Textile, Clothing, and Leather Goods Branch of the War Production Board. The Senate Defense Committee, which also investigated the same charges, reported, on the other hand, that "the Guthrie case points to the conclusion that certain dollar-a-year men . . . are unable to divorce themselves from their subconscious gravitation to their own industries."[13]

House and Senate committees have thus reached almost diametrically opposite conclusions with respect to the dollar-a-year men. One has given them what might be termed a reasonably clean bill of health; the other holds them primarily responsible for an alleged failure on the part of the War Production Board to secure maximum war-time production.[14] The resulting situation is both unfortunate and confusing. The war-time relationship of government to business makes the services of the nation's business leaders almost indispensable to the success of the war program. They should not be criticized solely because of their former connections, nor, on the other hand, should they be vindicated if their acts are not in the public interest.

II. WAR SERVICE APPOINTMENTS

As already pointed out, the number of federal employees increased from 1,002,820 to 1,545,131 during the period from June, 1940, to December, 1941, and is still increasing. Since by far the largest part of these additions have been to the classified service, the magnitude of the Civil Service Commission's recruiting job is readily apparent. It has, in its own language, had to "beat the bushes" for qualified personnel. Its recruiting program was intensified during 1940 and 1941 "by utilizing every channel of publicity for its examinations, including newspapers, trade journals and other publications, the radio, the motion-picture industry, colleges and trade schools, and labor, professional, and scientific organizations; through personal canvassing by its special representatives and examiners and by the secretaries of its boards of United States Civil Service examiners; by securing the aid of other governmental organizations such as the Social Security Board, the Railroad Retirement Board, and the Post Office Department; and by sending special representatives or examiners to colleges, meetings of trade and labor organizations, and other promising sources of supply. Examinations in which particular difficulty has been experienced in securing eligibles have been placed on a consolidated list, which has been displayed in every post office throughout the nation and has been given publicity in many other ways. In occupations for which fully skilled and experienced workers are no longer available, provision has been made for recruiting persons with related basic training and experience, or with aptitude for developing skill, and for giving them further training on the job. Age limits and physical requirements have been liberalized for positions in which immediate or prospective shortages of fully qualified persons exist. The employment of women in critical occupations has been encouraged wherever their employment is practicable."[15]

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[13] *Additional Report of the Special. Committee Investigating the National Defense Program*, Senate Report No. 480, Part 8, 77th Cong., 2nd Session, p. 20.

[14] See *New York Times*, June 19, 1942.

Not only did the Civil Service Commission intensify its recruiting program during 1940 and 1941, but it also subordinated, where it seemed desirable to do so, existing civil service requirements to the needs of defense agencies. "It has permitted the retention by defense agencies of many temporary employees who have acquired training and experience in the course of their employment, even though they are not immediately within reach on the register for probational appointment. Whenever necessary, it has exercised its power, under Executive Order No. 8564 of October 8, 1940, to authorize the filling of any position connected with the national-defense program, without regard to the competitive requirements of the civil service rules, 'whenever, because of a public exigency directly connected with the national-defense program, or because of the urgency for the immediate filling of a position involved in such program, the Civil Service Commission determines that it is in the public interest to do so'."[16]

Furthermore, the Civil Service Commission during 1940 and 1941 streamlined its requirements and procedures in order to expedite the examination and placement of available workers. Changes in the examining process which were authorized included "extension of maximum age limits and revision of experience requirements in examinations for occupations in which there was an existing, prospective, or possible future shortage of workers; liberalization of physical requirements; further extension of the use of continuously open examinations; use of unassembled instead of assembled examinations when necessary; and standardization of district system examination announcements so that they might be issued by the district office without being first referred to the central office."[17]

Changes in placement procedure were even more far-reaching. The Commission adopted a policy of decentralization, delegating its authority as much as possible to personnel officials of operating departments, as well as to its own district offices, and through the latter to local boards of examiners and special field representatives. It "stationed liaison officers and special representatives at the central offices and the more important field establishments of national-defense agencies, with full power to act for it or its district managers in handling many types of personnel transactions." In some cases the operating agencies also decentralized their procedures so that the Commission's field representatives and the agency's field appointing officers could take final action on field personnel transactions jointly.[18] The result was a speed-up in placement procedure to the point where personnel operations which formerly required weeks were now frequently completed within a few hours.

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[15] *58th Annual Report, United States Civil Service Commission,* 1941, p. 2.

[16] *Ibid.*, p. 3. A similar order was issued on March 26, 1917, under which some World War I appointments were made.

[17] *57th Annual Report, United States Civil Service Commission,* 1940, pp. 3–4.

All of the changes described in the preceding paragraphs were effected within the framework of existing civil service rules. In a sense they constituted the answer of the Commission to the charge that it could not in an emergency recruit personnel fast enough to meet the needs of the government. At the same time, however, it was apparent that relaxed rules and streamlined procedures constituted a threat to centralized control over the selection process. The war agencies, although nominally under civil service, were in fact selecting much of their own personnel. Furthermore, the recruiting activities of the Commission were being duplicated by similar activities on the part of those operating agencies most in need of personnel.

This situation was changed, however, by an executive order of February 16, 1942, which authorized the Civil Service Commission "to adopt and prescribe such special procedures and regulations as it may determine to be necessary in connection with the recruitment, placement, and changes in status of personnel for all departments, independent establishments, and other Federal agencies, except positions in the field service of the postal establishment." The order further provided that persons appointed under its authority would not thereby acquire a classified (competitive) civil service status, but, in the discretion of the Civil Service Commission, might be retained for the duration of the war and for six months thereafter.[19]

Following the promulgation of this order, the Civil Service Commission adopted and put into effect a set of "War Service Regulations" making a number of changes in the civil service rules.[20] These regulations prohibit all recruiting activities except those which have the prior approval of the Commission and are carried on under its direction. Each department and agency is required to report to the Commission at such intervals as may be prescribed its estimated future needs for personnel and to place a requisition for it as soon as the need becomes apparent.

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[18] *58th Annual Report, United States Civil Service Commission,* 1941, p. 1.

[19] Executive Order No. 9063, *Federal Register,* Feb. 19, 1942. This order has no counterpart in the World War I period. The Civil Service Commission reported on November 14, 1918, that "notwithstanding the tremendous demand of the government service, the merit system of appointments has been fully maintained in all the older branches." It added, however, that "some new agencies have been permitted by executive orders to make appointments without reference to the registers of eligibles." *Thirty-fifth Annual Report of the United States Civil Service Commission,* 1918, p. II.

[20] See U. S. Civil Service Commission, *War Service Regulations;* also *Circular Letter 3608* and *Departmental Circular 323.* These regulations do not apply to attorney positions, since they are under the jurisdiction of the Board of Legal Examiners.

Under the regulations, examinations may be either competitive or noncompetitive. Maximum age limits are abolished except in cases "where the appointing officer establishes to the satisfaction of the Commission that the interests of sound administration require such limits for a particular position." In cases where the demand for qualified eligibles exceeds the supply, the Civil Service Commission may rate competitors as simply eligible or ineligible. Only in instances where the supply exceeds the demand over a considerable period of time must numerical ratings be assigned. In the case of unassembled examinations, numerical ratings are continued, but they are less refined, since they can end only in 2, 3, 5, or 8. In any event, selection from the list of eligibles furnished by the Commission may be made in any order except that, as at present, the names of veterans may not be passed over without reasons given in writing.

Appointments made under the new regulations are called "war service appointments," and are for the duration of the war and for six months thereafter. Appointees do not acquire a classified civil service status. For temporary appointments, which are for a period of one year or less, "it is unnecessary to use eligible lists if they do not appear entirely appropriate." Furthermore, there is to be no follow-up in the case of temporary appointments to see whether they have been terminated at the specified time "unless it becomes apparent that a check on a particular appointing officer is necessary." Finally, it may be noted that the apportionment rule is modified by exempting from it positions in the skilled and unskilled trades, as well as all positions for which the entrance salary is $1,440 or less per year.[21]

It is seen from what has been said that the principal changes made by the war service regulations are (1) the adoption of pass examinations for many classes of positions and (2) the limiting of appointments made as a result of these examinations to the duration of the present war. On the surface it might appear that these changes seriously weaken the merit system at a time when it should be strong and virile. At the same time, however, it should be borne in mind that the major purpose in simplifying procedure is to bring about maximum speed in the filling of war positions.

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[21] Civil Service Rule VII, Sec. 3, provides in part that "certification for appointment in the departments or independent offices at Washington shall be so made as to maintain, as nearly as the conditions of good administration warrant, the apportionment of appointments among the several States and Territories and the District of Columbia upon the basis of population. . . ."

If an inferior type of employee is appointed, it is because of a shortage of available manpower quite as much as because of a lowering of entrance standards. Furthermore, the appointment is not a permanent one, but is definitely limited to the duration of the war. Under such circumstances, there should be little doubt concerning the wisdom of the changes which have been made.

III. TRANSFERS

A third method by which personnel can be obtained for war agencies is by transfer of employees from other agencies whose work is not of a defense nature. Inter-organization transfers have in the past not been very numerous, due to various restrictions imposed by the civil service rules. The difficulties involved in transfer were further increased by an executive order of May 27, 1941, which directed the Civil Service Commission to refuse examination or certification to any person who at the time or within three months preceding was employed in a civilian capacity by any executive agency of the government unless that agency gave its written consent.[22] This order had the effect of "freezing" federal personnel by making it virtually impossible for one agency to draw employees from another unless the latter agreed to the transfer.[23]

The situation thus created was obviously favorable to those agencies which were not feeling the full effects of defense expansion. On the other hand, it was very unsatisfactory from the employee standpoint, as well as from the standpoint of those agencies which were in need of personnel. After war was declared on December 8, 1941, it became apparent that the shortage of civilian manpower in certain occupations which were essential to the defense program would become intensified. The order of the preceding May was accordingly modified by directing the Civil Service Commission to request the release of those employees found to be qualified to do war work and whose positions could be filled by the agency in which they were employed.[24]

Despite this modification in the original order, the situation remained unsatisfactory. Several agencies enforced what amounted to a blanket prohibition upon all transfers. A survey made in February, 1942, revealed that only about 8,000 federal employees had been transferred since the declaration of an unlimited national emergency in May, 1941. Since there were at the time, as already pointed out, only eight agencies which laid no claim to participation in the war effort, it seemed clear that little could be expected in the way of voluntary liberalization of transfer policies.

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[22] Executive Order No. 8760; *Federal Register*, May 29, 1941.

[23] This is the policy followed during World War I, except that the "freezing" was done by statute. See Herman Feldman, *A Personnel Program for the Federal Civil Service*, p. 18.

[24] Executive Order No. 8973; *Federal Register*, Dec. 16, 1942.

The result was an executive order directing the Bureau of the Budget to establish "priority classifications of the several executive departments and agencies, or of parts or activities thereof, in respect to their relative importance to the war program," which would be controlling in the matter of transfers. At the same time, the Civil Service Commission was authorized to secure information regarding employees who were competent to perform essential war work in departments or agencies having a higher priority classification, and, with the consent of the employee concerned, to transfer him to any department or agency with a higher priority classification. It was further provided that such transfers should become effective within ten days after notification unless the employing agency presented evidence to show that its work would be jeopardized by the loss of the employee, in which case the Civil Service Commission would make the final decision.[25]

Within a few days after the issuance of this order, the Bureau of the Budget announced the grouping of government agencies into five classes.[26] Class I, which includes those agencies most closely related to the war effort, consists of the Navy Department, the War Department (with the exception of civil functions performed by the Corps of Engineers), the War Production Board, the War Shipping Administration, the United States Maritime Commission, the Selective Service System, the White House Office, and the lease-lend activities of the Procurement Division and of the Surplus Marketing Administration. Among Class II agencies, which are of somewhat less importance to the war effort, are the Weather Bureau, the Federal Bureau of Investigation, the Office of Price Administration, the Office of Censorship, and the Foreign Service.

Class III agencies, of still less importance in the war program, include, for example, the Civil Service Commission (with the exception of the Retirement Division), the Bureau of the Budget, the Reconstruction Finance Corporation, the Federal Power Commission, the National Labor Relations Board, and the Agricultural Adjustment Administration. In Class IV were placed such agencies as the Patent Office, the Bureau of the Census, the National Resources Planning Board, the Federal Trade Commission, the National Mediation Board, and the Tariff Commission. Class V, which consists of those agencies that are of least importance in the war program, includes, among others, the Federal Deposit Insurance Corporation, the Work Projects Administration, the National Archives, the Securities and Exchange Commission, the General Accounting Office, the Veterans Administration, and the Post Office Department.

A notable feature of this classification is that it follows functional lines, even to the point of dividing bureau activities in many instances. Thus the work of the Public Health Service is partly in Class III, partly in Class IV, and partly in Class V. The Immigration and Naturalization Service of the Department of Justice is in Class V, except as respects border patrol and alien registration, which are in Class III. Only two departments fall entirely in one class—the Navy Department, in Class I, and the Post Office Department, in Class V.

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[25] Executive Order No. 9067; *Ibid.*, Feb. 25, 1942.

[26] Budget Bureau, *Circular Letter No. 388.*

Following the establishment of this classification plan, the Civil Service Commission put into effect on March 16, 1942, revised transfer regulations.[27] These provided that employees who wished to transfer should file application with the Commission rather than with the agency to which they wanted to go. The various agencies, in turn, were required to place requisitions for personnel with the Commission, even in those cases in which it was known that the vacancies would be filled by transfer. Such requisitions, however, could state the name of the employee whose services were desired.

If the transfer was to an activity with a higher priority classification, it could be effected by the Civil Service Commission without the consent of the agency in which the person was employed. The employee's own consent, however, was required. On the other hand, it was necessary to have the approval of the agency in which the person was employed if the transfer was to an activity with the same or a lower classification. Under these regulations, approximately 32,000 transfers to war jobs were authorized.

Transfers remained on a voluntary basis until September 12, 1942, when President Roosevelt issued an executive order effective September 27, delegating complete authority over them to the War Manpower Commission. Two days later, the Commission issued a directive giving to the Civil Service Commission the power to authorize transfers "without the consent of the employee, of the department in which he is employed, or of the agency in which he is to be employed, whenever it finds that the transfer will result in a more effective contribution to the war program. . . . Employees are required to be given an opportunity to be heard by the commission before being transferred without their consent, and may not be transferred to a position carrying a lower salary than they are receiving." Likewise prohibited is "the transfer of employees beyond reasonable commuting distance from their homes unless the government defrays the transportation expenses of the employee and his immediate family and the cost of moving his household goods."[28] The Commission must, before transferring an employee, give his department an opportunity to present evidence that its work will be jeopardized by the proposed transfer.

Under the directive, the Civil Service Commission may also authorize the transfer of a government employee to a private industry engaged in war work whenever it finds the employee qualified to perform work in an occupation which is listed as critical by the U. S. Employment Service. Transfers to private industry cannot be made without the employee's consent, but may be ordered without the consent of the department in which he is serving.

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[27] These regulations apply also to attorneys, since they have been adopted by the Board of Legal Examiners.

[28] *Press Release*, Office of War Information, Sept. 14, 1942.

The new transfer regulations establish, with some modifications, what may be called a selective service system for federal employees. Although they do not prevent an employee from resigning his position, they place him, while he is an employee, under virtually complete control by the government so far as relates to the utilization of his services. The Civil Service Commission is now in a position to give to the war agencies the cream of the crop so far as civilian personnel is concerned.

IV. USE OF STATE-SELECTED EMPLOYEES

The final method by which the personnel for war agencies has been secured is through the use of persons selected by the states. Although the U. S. Civil Service Commission has in the past coöperated in various ways with state personnel agencies, it lacked the authority prior to 1938 to certify eligibles from state registers to fill federal positions. In that year, however, the rules were amended to require it to render all practicable assistance to state and local agencies which requested its coöperation and to join in conducting examinations under such regulations as might be jointly agreed upon. The amendment further provided that "where the Commission has joined in the conduct of such examinations, it may certify eligibles from appropriate resulting registers to fill vacancies in the United States civil service."[29]

Despite this authorization, there appear to have been no joint examinations conducted, and therefore no use of state registers by the Commission. The principal reason is that, although there are undoubtedly many federal positions the duties of which are practically identical with those of positions in the state services, class titles and specifications are rarely ever the same.

This situation might well have continued but for the fact that the federal government on January 1, 1942, took over the operation of the approximately 1,500 state employment offices in the United States. Although the Social Security Board had previously coördinated the work of the various state services, it had exercised no control over personnel except to require that it be chosen under an approved merit system. Employees of the service were therefore state employees. This situation was changed, however, by an executive order of December 23, 1941, which authorized the Federal Security Agency to appoint to a position in the Social Security Board any employee of a state employment agency who was required in the operation of the service by the federal government.[30] The order also provided that vacancies which occurred after the inauguration of federal operation might, with the concurrence of the Civil Service Commission, be filled from eligible lists prepared under the rules of a state merit system which had been previously approved by the Social Security Board.

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[29] *Fifty-fifth Annual Report of the United States Civil Service Commission*, 1938, p. 50.

The order, which affected approximately 20,000 state employees, was put into effect on January 1, 1942. Since the nationalization program did not include the unemployment compensation functions of the employment offices, these functions were left to be performed by the states with their own personnel. In other words, the persons who were inducted into the federal service included only those who were principally concerned with the administration of employment service activities as distinct from unemployment compensation work.

Absorption into the federal service was accomplished without qualifying examinations or reclassification, and at existing state salary rates. Appointees were given a probationary indefinite status with full civil service rights at the end of six months. Provisional and temporary employees were taken over on a "job employment" basis,[31] with no civil service rights except such as might be subsequently acquired by passing a necessary examination.

The Social Security Board assumed responsibility for insuring, so far as possible, that no state employee inducted into the federal service should suffer any impairment of retirement benefits, seniority privileges, or other rights acquired under state merit systems. Since this could not be guaranteed by federal action alone, the regional representatives of the Social Security Board were instructed to negotiate with the appropriate state personnel agencies for an agreement to grant indefinite leaves of absence without pay to persons inducted into the federal service, so that their return to state employment could be effected at the end of the emergency without impairment of their service records.

Federal operation of the U. S. Employment Service, as Mr. McNutt has said, provides "a direct administrative line straight from the Director of the United States Employment Service . . . through the twelve Regional

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[30] Executive Order No. 8990; *Federal Register*, Dec. 25, 1941. Appointments were to be made subject to the following conditions: "(1) that such employee was on the rolls of the state employment security agency at the close of business December 31, 1941; (2) that he was previously approved for permanent or probational appointment, or within the six-months' period beginning January 1, 1942, becomes eligible for such appointment under the rules of a state merit system previously approved by the Social Security Board; and (3) that he satisfactorily completes a six-months' probationary period from the date of his induction into the Federal Service."

[31] See Civil Service Rule VIII, Sec. 4.

Labor Supply Officers of the service, to the individual state and local offices."[32] It supplies the means by which centralized control has been established over the practices and procedures involved in the placement and transfer of workers in war industries. At the same time, however, the control under the existing set-up would not have been complete without a federalization of personnel. The order of December 23, 1941, makes federal employees out of 20,000 state employees as effectively as if selection in the first instance had been by the federal government, but at the same time makes it possible to return them to the states at the expiration of the war.

V. CONCLUSION

The additional civilian personnel needed for the war effort is being secured in four principal ways: (1) loan from industry, (2) a streamlined selection program, (3) transfer from positions in less vital activities, and (4) federalization of state-selected employees. None of these changes is designed to be permanent. They are emergency measures adopted at a time when speed is perhaps the most important factor in the entire selection process. In the final analysis, the task of securing the services of an adequate body of government employees is only a part of the larger problem of effectively mobilizing and utilizing the man-power of the nation in the prosecution of the war. If the changes which have been made contribute to this end, their wisdom is hardly open to question at the present time.

So far as the future is concerned, the results should be good. When the war is over, it ought to be comparatively easy to effect a return to normalcy. The first employees to be laid off because of a cessation of work will be those appointed for the duration of the war. Instead of the widespread uncertainty which prevailed among war workers generally after World War I was over,[33] there should be at the close of the present conflict no doubt regarding the termination of their employment on the part of those persons who were appointed after the new regulations went into effect. The question of who shall be retained and who shall be laid off has to this extent been determined in advance.

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[32] *Press Release,* Federal Security Agency, Dec. 19, 1941.

[33] See *Thirty-Sixth Annual Report of the United States Civil Service Commission,* 1919, pp. xix–xx.

THE POLITICAL SCIENTIST AND NATIONAL SERVICE IN WAR-TIME

REPORT OF THE COMMITTEE ON WAR-TIME SERVICES OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION*

This is a time when the nation expects every man to do his duty. The first duty of a learned profession is to determine how its members can be of greatest usefulness. This report is intended to be an analysis of possible and proper contributions which political scientists may make to the national effort. For the most part, it suggests ways and means to the individual; it makes few recommendations for action by the Association.

This report examines the opportunities for public service which are available to political scientists in the following fields of activity: (1) in public employment; (2) in undertaking tasks for the federal government; (3) in undertaking needed research; (4) in training persons for the public service; (5) in advancing public understanding of war-time and post-war problems; and (6) in strengthening democratic institutions and ways. Much of what is said on each of these subjects will be applicable to other social sciences and to colleges and universities as a whole.

I. EMPLOYMENT IN THE PUBLIC SERVICE

Employment by the federal government during the war is viewed by many people as tangible evidence that the individual so employed is actively associated in the major undertaking of the nation. There is consequently a great deal of interest on the part of political scientists in the opportunities for their employment in the federal service at this time.

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* The Committee on War-time Services was appointed by President William Anderson in response to a resolution adopted by the American Political Science Association at its annual meeting in December, 1941. This resolution charged the President of the Association with taking steps, by creation of a committee or by other means, "to ascertain what efforts should be made, and to take such action as seems desirable, to make the resources of the United States represented by special training and knowledge in political science effectively available to the people of the United States" during the present war. The charge of the Committee gave it considerable discretion in determining the scope and nature of its inquiry, and the Committee decided, after consultation with persons in other disciplines, to give consideration to any phase of college and university activity that seemed relevant to its immediate assignment.

The Committee held a number of conferences to which members of various social science professions and representatives of government departments and agencies were invited. By means of these, and by means of contacts of individual members of the Committee, a wide range of experience and interest was explored.

Members of the committee were: Merle Fainsod, Office of Price Administration; Ernest S. Griffith, Library of Congress; William C. Jones, University of Oregon; Robert D. Leigh, Federal Communications Commission; Kirk H. Porter, University of Iowa; Herman Walker, Jr., Department of Agriculture; and Charles S. Hyneman (*chairman*), Bureau of the Budget.

Recent years have seen a marked rise in the value placed on formal training in government and politics as preparation for certain positions in the public service. Job descriptions and civil service examinations for certain beginning positions have been revised to pay a gratifying, if not a flattering, tribute to the political science curriculum. For jobs in the higher brackets, however, the political scientist has not so successfully sold himself to recruiting and appointing officials. There are, roughly described, four types of positions in the federal service for which the mature student and teacher of political science might be supposed to be especially fitted: research work, administrative and executive work, service in an advisory capacity, and organizing work.

(*a*) *Research.* The political scientist is in sharp competition with other social scientists for appointment to research positions in the federal service. Inquiry reveals that few departments indicate "political science" as a necessary, or even a highly desired, background of knowledge for any of their research positions. Departments that do list political science as a principal requirement have very few positions for which it is specified. In a great proportion of the instances where political science is specified as an acceptable background for a position, economics or law is also specified and is usually preferred; consequently, the appointment is much more likely to go to an economist or a lawyer than to a political scientist.

There are, of course, exceptions to the rule. The political scientist who has trained himself in public opinion analysis enjoys an advantage in the competition for certain positions that is equalled only by the social psychologist. For positions involving research into problems of administrative organization and management, the political scientist with a public administration emphasis is definitely desirable. Where knowledge of foregin systems of government, international law, or national policies on foreign affairs is needed, men and women trained in those fields of political science have a good chance of employment.

It must be emphasized, however, that the number of research positions for which training in political science is specified is relatively very small indeed, and apparently not growing at any remarkable rate. The failure of the political scientist to compete more successfully for recognition in the description of positions or in appointments seems to be due mainly to the following:

First, persons who control federal employment do not know what political science is. Business men, and men recruited from other non-academic pursuits, are pretty sure to know what an economist talks and writes about (they may have majored in economics or commerce in college days), but "political science" does not sound to them like anything that a man is better off for having studied.

Second, knowledge of statistical method is useful, if not essential, in most governmental research positions, and the economists have incorporated statistics into their training much more universally and much more intensely than have political scientists.

Third, the individual is likely to be valued for governmental research only if he has familiarity with a functional field. The Interstate Commerce Commission wants an economist who knows the transportation industry or the problems of some other business which it regulates; the Securities and Exchange Commission hires research men who know corporate practices; the Department of Agriculture wants an economist who has a feel for the farmers' problems. What does the political scientist know about any of the problems or situations which government is created to deal with? Unless he does have intimate knowledge of the things which determine the program of the governmental agency, why should it hire him to do research? There are areas of governmental action in which the political scientist is at home, but they are not numerous.

Very closely akin to this is a *fourth* reason why political scientists have difficulty in getting into federal research jobs. Too few political scientists have got around enough to make themselves attractive to operating chiefs. Appointing officers prefer men who have demonstrated their prowess off the campus. If they want an economist, they want one who has done an extensive marketing survey, or counselled in the reorganization of a corporation, or done some other job that evidences ability to draw from the hot welter of human affairs facts and conclusions that support decisions on public policy. If the political scientist wants to be employed in a research job related to development of federal fiscal policy, federal housing policy, or any other policy with which he may be supposed to have special familiarity, he would better be able to show that he has worked successfully with the raw materials from which such policies are made.

Too often the economist and the lawyer can show such experience and the political scientist cannot. For every political scientist who has helped a department of state government build or destroy a trade barrier, there is at least one economist who has done the same and half a dozen economists who have advised trucking companies or other commercial firms concerning their trade barrier problems. As a consequence, the federal agencies that are at this moment grappling with interstate transportation difficulties are clamoring for economists and showing little interest in political scientists—such is the testimony of political scientists currently engaged in recruitment in Washington.

For these, and no doubt for other reasons, the economists and the lawyers are in on the ground floor so far as federal research work is concerned. Naturally, they value their kind of training, and naturally they press for men trained as they were in making appointments.[1]

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[1] If this account of the "demand" for political science training in federal research positions errs, it is undoubtedly in that it pictures the situation too favorably for the political scientist. Writing in 1940, Lewis B. Sims, then with the Bureau of the Cen-

(*b*) *Administrative and executive work.* The college professor has one special qualification for responsible administrative and executive work which men in most other professions and pursuits cannot show. He is supposed to be neutral in respect to the principal interests struggling to control public policy. The political science professor enjoys, on this score, no particular advantage over the professor of law or the professor of economics, and the evidence is that both of the latter do rather better than he in capturing such positions. There is a supposition on the part of some members of the political science profession that to have taught public administration is to have proved competence for administrative or executive work. That notion enjoys no widespread acceptance in Washington. To have been dean of a college may be accepted as demonstration of executive capacity; to have organized a league of municipalities, sat on the state unemployment compensation board, or served a term as commissioner of public safety—such experiences (assuming minimum personality qualifications and freedom from indictment) confer an enormous advantage in seeking federal employment, and if combined with some reputation as a teacher of public administration, will virtually guarantee a job on the present market.

Recent years have seen a remarkable increase in the number of positions involving duties loosely described as administrative management, organization planning, procedures development, and so on. For these positions, training in political science with emphasis on public administration is excellent background and recognized as such by those who write job descriptions and make appointments. Some of these assignments involve analysis of broad policies and survey of general relationships between working units. At such a task, a mature student or teacher of public administration, familiar with the policy area involved, may give a very good account of himself; even so, he is likely to be better appreciated if he has previously rubbed shoulders with organizational problems. But most assignments in analysis, planning, and development of organization, policies, and procedures are not concerned solely, or even mainly, with examination

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sus, said: "Under present conditions, there is hardly a position in the federal civil service that the professional political scientist *per se* can fill. It is almost inconceivable at the present time that an appointing officer, in one of the social or economic agencies in Washington, should call upon the Civil Service Commission for a 'political scientist.' . . . The pure political scientist, if he is looking for a career in the federal government, needs a new federal government! There is no place for him as such—or practically none." C. J. Friedrich and E. S. Mason, eds., *Public Policy* (Harvard University Press, 1940), pp. 288–289, 293. Since Sims wrote, the war-time scarcity of man-power has led to greater employment of political scientists, but even so the chief of the Civil Service Commission's unit charged with placement of economists, political scientists, and statisticians states emphatically that the above quoted remarks "are still essentially true."

of broad policies and general relationships. More workaday about-the-shop problems are involved, and the job can be done satisfactorily only by a person who has been close to government in operation. Scarcity of men and the mushrooming of government organizations as the war goes on may combine to force the acceptance of purely academic men for such positions. As yet, however, the teacher of political science, even though his specialty be public administration, has little ground for expecting employment in this field unless he can show a record of practical experience.

(*c*) *Service in advisory capacity.* As the making of public policy is vested to greater and greater degree in administrative departments and agencies, there is increasing employment of men who give a major part of their time and effort to shaping public policy. When men are brought into an organization because of their value in advising on policy, they are likely to be attached to a position that has major duties of a research or administrative character. If research, what was said above about that kind of position applies fully here; if administrative or executive, what was said on that subject also applies. The likelihood that the political scientist will be employed to advise on the making of public policy depends very much on his ability to show a background of knowledge and experience which the appointing officer considers "practical."

(*d*) *Organizing work.* In peace-time, the federal government spends a great deal of money on efforts to get the people interested in this or concerned to do that. In war-time, these activities are greatly expanded and sharply accelerated—through an Office of Facts and Figures, a Coördinator of Inter-American Affairs, an Office of Civilian Defense, and so on. To get the results in thinking and activity that are desired, there are a good many people on the pay-roll, engaged in what is here called "organizing work."

For this kind of task, the college professor has a special fitness. He is accustomed to dealing with people in groups, although they may be small groups, young people, and caught in a setting which makes them easy to manage. Even so, this is experience which promises some fitness for maneuvering people on a larger scale, and there is evidence that the college professor is received with reasonable favor when these positions are filled. Newspaper men, public welfare workers, and trade association secretaries may be preferred, but if the professor can show both special knowledge of the program which the governmental agency wants to accomplish and some experience in conducting forums, organizing extension work, developing short courses, or in similar off-campus activity involving work with adult groups, he will compete on equal terms with men in all other professions and pursuits.

Employment in state and local public service. The Committee has given no particular attention to this problem. Members of the political science profession, devoted as they are to the study of public affairs, are no doubt informed concerning needs in their states and localities for the kind of knowledge and skill which the political scientist has, and the likelihood that administrative officers and politicians can be induced to recognize those needs. The committee wishes only to urge upon the profession a realization that service in state and local government may prove fully as important to the nation, even when it is at war, as any service which the political scientist is likely to render in federal employment. Indeed, it may be that the scarcity of competent people at this time opens a way for such an infiltration of political scientists into state and local public service as will affect a significant regeneration of democratic government where it lies closest to the people.

Recommendations in respect to public employment. The committee assumes that members of the political science profession want men and women of their kind to find places in the public service where their knowledge and training will influence public policy. The committee assumes further, therefore, that the profession is concerned to see an accelerated movement of political scientists into public employment during this war, during the immediate post-war period, and during any other time when the nation is confronted by crisis. Influenced by these assumptions, *the Committee recommends that the members of the Executive Council of the Association who reside in Washington be designated by the President of the Association as a committee to concern itself with this problem.* To this group, the President may wish to add other persons.[2]

The present committee is reluctant to suggest what the proposed committee ought to do. Possibly it could perform a valuable service in advising federal recruitment and placement officers as to where individuals may be found who possess needed combinations of knowledge in political science. It is not intended to suggest that the Association's committee should become an active recruitment or placement agency. It must be recognized, however, that practically every prominent social scientist in Washington gets frequent calls for advice on the quality of persons within his acquaintance. Such advice as is given is certainly irresponsible in any institutional sense; it is likely to be unfair to persons who are unknown to the one passing judgment; and it may be of little value, since it is frequently given on the spur of the moment and without opportunity for reflection. A committee should be able to perform this task much more satisfactorily than it is now being performed.

It is possible that the committee might undertake some action to secure a more favorable employment situation for students and teachers of political science. Some of the departments and agencies might find that they have places for which the student of political science is especially suited if they once had called to their attention what the political scientist is trained to do. Perhaps, if the desirability of doing so were called to its attention, the Civil Service Commission would urge appointing officers to reëxamine their jobs with a view to more adequate utilization of men and women trained in political science. Undoubtedly, there is much that the committee can do, directly or indirectly, to advance the employment of political scientists without embarrassment to the Association or its members.

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[2] Such a committee has been formed and is under the chairmanship of Marshall E. Dimock.

II. UNDERTAKING TASKS FOR THE FEDERAL GOVERNMENT

The activities of the federal government penetrate to every community of the nation. Some of its work is carried out on college and university campuses—the agricultural experiment station affords a familiar example. Since the country embarked on its defense program some two and one-half years ago, a great deal of scientific work has been farmed out; the Office of Scientific Research and Development has made a great number of research assignments, and these projects are under way in a number of college and university laboratories.

The Committee sought, by conferences with a number of federal agencies, to determine the likelihood that jobs requiring the services of social science groups would be farmed out. The conclusions are, first, that a number of departments have work to be done which can be assigned, but second, that they are not likely to make such assignments unless someone encourages them to do so and helps work out specific projects.

The Office of Facts and Figures, before it was absorbed into the Office of War Information, was seriously considering the establishment of opinion and attitude study centers on college and university campuses, and it may be that this idea will be carried into operation in the near future. The Office of Defense Health and Welfare Services, it now appears, will be charged with surveying communities and making plans for the reception of persons who may be evacuated from centers under attack. Without doubt, carefully selected groups of faculty people, competent to evaluate water supply, housing capacity, educational facilities, and other essentials to the reception of incomers, could be of great assistance in determining the suitability or unsuitability of particular areas for this purpose. In organizing faculty groups for such service, political scientists could well take the lead.

A great number of federal agencies are interested in the fruits of social science research. The National Resources Planning Board is just now completing a survey of the kinds of research jobs which are being contracted out, and the frequency with which this occurs. It appears that in some instances college professors have been retained to work at home on subjects specified by a federal department, but that this has not happened very often. Unless some special effort is made to encourage departments to do this sort of thing, they are much more likely to put the professor on the pay-roll and bring him to Washington to do the job.

It would be possible, and no doubt feasible, to employ college and university men to study and report critically on the organization and functioning of federal agencies in the field. Thus, the Office of Price Administration might invite a faculty man, or a group of faculty men, to report on the behavior of local rationing boards, or on public attitudes toward administration of price regulation. Inquiry indicates that federal agencies are not likely to extend such invitations unless someone makes a considerable effort to stimulate them to do so.

The Committee has considered the advisability of urging that an office or agency be set up in Washington to stimulate the farming out of work. This might be a federal office, comparable to the Office of Scientific Research and Development; it might be a special arm of the Social Science Research Council; it might be a committee or officer of the American Political Science Association. The Committee has also considered the advisability of recommending an organization of university and college people which would make sure that requests for assistance would be responsibly considered and assigned. The Committee has decided, however, to make no recommendation on either point. This is in part because the Committee is uncertain that the results of such an undertaking would justify the effort; in part, because the Committee believes that the National Resources Planning Board, which is now completing a study of the farming-out process, is in a much better position to make recommendations for organization and action. If, as recommended above, the Association sets up a permanent committee resident in Washington, that committee should give further thought to this question.

But the lack of an intermediary will not keep imaginative and thoughtful individuals from establishing contact with governmental agencies. Undoubtedly one of the best ways for people who are in the educational institutions to extend their services and their influence beyond the campus at this time is to ally themselves with the state or local defense council. Some college and university groups have done this; the University of California's Bureau of Public Administration is a notable example. If members of the faculty have established a record of service throughout the state, they should have prestige which would guarantee an instant welcome for their services. State and local defense councils are planning boards in embryo, and if planning-minded faculty people will organize themselves into a research unit and attach themselves to a council, they should be able to turn its activities from futile makeshift to fruitful planning.

There are also federal, state, and local agencies with express legal obligation to carry on research and planning activities. Faculty people, along with other men and women of scholarly inclinations, can be of great assistance to such establishments. The University of Denver, for instance, has a working agreement with the regional office of the National Resources Planning Board whereby it supplies a much-needed leadership in the study of problems of concern to the Rocky Mountain area. For several years, the Bureau of Municipal Research of the University of Oregon had a formal agreement with the state planning board whereby it served the latter by carrying on investigations in fields of public administration and public finance.

Research and planning are major activities of many official establishments which have no such words in their titles. The Federal Security Agency, the Office of Defense Health and Welfare Services, the Office of Defense Transportation, the National Housing Agency, the state, county, and city departments of health—all of these and half a hundred more departments and offices are overwhelmed with planning problems presented by war boom towns and the migration of workers and families. Not one of these agencies is so adequately staffed that it has no use for specialists who have a feel for the local setting. In many instances, individual faculty men, or groups of faculty men, have supplied the most realistic thinking that has been brought to bear on these war-time problems of their states and localities.

Speaking generally, no persons on a college or university campus are expected to have as universal a knowledge of the relationships between government and community problems as the political scientist. It is surely not extreme to say that the political scientist has a special obligation to inform his college or university officials and staff of the ways in which they can properly coöperate with public officials in the solution of pressing public problems. Is it expecting too much to urge that political scientists take it upon themselves to see that their respective institutions (especially state universities) maintain a constant service, in research and other aids, to at least the principal planning agencies within their areas of influence—the community, the state, or the region?

III. UNDERTAKING NEEDED RESEARCH

The primary task of the political science profession, other than that of teaching young people, is to provide specialized thinking on public affairs. The nation never needed that service more than it does right now. The Committee is firmly of the opinion that the great majority of political scientists can find no better way to serve the country than by carrying on systematic inquiry and disciplined thinking upon the more critical issues that face the country.

The Committee supposes that the political science profession is likely to continue its scholarly work in a pattern of individualism, and that the best assurance of a timely product lies in the initiative of the individual members of the profession. Imaginative students of public affairs will have no difficulty in identifying some of the institutions and ways that are in danger of distortion or liquidation during this decade or generation, and students possessing initiative will tackle these problems whether urged to do so or not. We have not yet stated adequately what it is that we call democracy; we have not yet determined what elements or parts of the democratic structure we count indispensable and not to be yielded; we have not yet projected courses of action calculated to assure the retention or continuation of these indispensable and not-to-be-yielded things. Our efforts to win the war may greatly alter or even destroy the federal system. The political scientist has an obligation to advise the makers of policy as to what is lost when federalism is lost, and to give them wise counsel as to the probable consequences of various substitutes for the federalism we have known in the past. While war-time organization and programs launch the nation on a course that, accepted, may prove the foundation of a socialist state, or rejected in violence, may shove the nation back into decades of effort to solve its social problems without planning or control—while these organizations and programs are being developed—the political scientist must not sit silent and uncritical.

It seems to the Committee that the customary individualism of the profession is a luxury that cannot be maintained unimpaired in war-time; political scientists must not go through the war with a business-as-usual attitude toward research and critical writing. The crises upon the nation and awaiting the nation demand that the profession recognize priorities in its scholarly work, and that it be prepared for allocation of projects. How can the profession be guided into its greatest usefulness? Students, mature and immature, should know what men of affairs consider to be the more crucial issues; students should be told what others are doing, so that projects can be fitted to one another and duplication of effort can be avoided where it is not needed; steps should be taken to make sure that the fruits of research and thinking will come forcefully to the attention of people who determine public policy.

The Committee on Research of the American Political Science Association is undertaking to point the way to a more fruitful attack on crucial issues than the general body of the profession has heretofore achieved. The committees on Government and Public Administration of the Social Science Research Council have the same objective. It may be that one or the other of these committees, or the three of them collectively, will supply the profession with the leadership that is needed, but this will be so only if the members commit themselves to an aggressive rôle. The present committee does not ask that the profession go into politics, seeking to force particular policies upon public officials; it does ask, however, that the profession be given leadership in determining what to do, and that it be given assurance that the results of painstaking work will be laid before public officials and leaders in a language that they understand and under circumstances that command attention.

IV. TRAINING FOR THE PUBLIC SERVICE

The first section of this report should have made it clear that something more than the customary political science curriculum is needed if ready ingress to the federal service is to be provided for undergraduate and graduate students. Much more acutely needed than pre-service training at this time is training for persons already in the federal service. Certainly state and local public service will bear improvement and may be expected to respond to training efforts if properly instituted and intelligently applied. All these needs are fruitful fields for cultivation by the political scientist who approaches the problem of training eagerly and with intelligence.

Concerning the preparation of young people for entry into the federal service, the Committee will say only that the market for young women and for young men who are draft-free is open as it never was before, that essential to any training program is provision of at least a little experience that appointing officers will call practical, and that there is an excellent guide for the development of pre-service training in print and easily available (i.e., G. A. Graham, *Education for Public Administration*, Chicago, 1941).

The enormous expansion of the public service since the institution of the national defense program, connected with the loss of experienced federal servants to the armed services, has created a sharp and pressing need for training men who are already on the job. This task is primarily the responsibility of the agency that employs them, but the responsibilities of department management officers are such at this time that they are not likely to approach their training problems as quickly, as comprehensively, or as intensively as one would wish, unless they are given encouragement and assistance by outside groups.

The ESMDT program by which short courses in welding, motor construction and repair, and a hundred other subjects are now being provided by colleges and universities offers a pattern which might be adopted for training persons in clerical, supervisory, and management jobs.[3] Indeed an unsuccessful effort was made this summer to enlarge the legislative authorization to permit the U. S. Office of Education to reimburse colleges and universities for costs incurred in providing short course training for "federal management personnel."

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[3] The Engineering, Science, Management Defense Training Program (ESMDT) calls for the federal government, through the Office of Education, to reimburse colleges and universities for the costs incurred in providing short courses in certain specified fields of skill and knowledge.

Even though this effort to provide federal financial aid failed, the opportunity for service continues, and it is a service that can be provided by many colleges and universities at only nominal cost. A reasonable amount of cultivation of federal management in the locality should yield a guarantee that instructors will be supplied and employees will be freed for study in evening courses or in full-time courses lasting a couple of weeks or less.

If the political scientist is interested only in training which he can provide himself—principles of public administration, personnel management, budget-making—he may get no takers for his wares because of doubt on the part of federal management officials that the professor knows enough that is of practical value. But if the political scientist will join his knowledge of federal training needs to the knowledge which the director of extension and others have of the institution's capacity to give training, then he may hope to see improvement of the federal service result from his efforts—an improvement, indeed, that will extend into many areas of activity in which he personally has no competence to instruct.

The Washington committee of the Association (recommended above), or the Committee on Public Administration of the Social Science Research Council, could render valuable assistance to educational institutions by informing them of critical training needs and advising them concerning the improvement of training curricula.

There is surely little that the Committee can say about the improvement of state and local public service through training. If the political scientist has been an active participant in or intimate observer of the government close about him, he will know how to find out where need for training is most acute and how to persuade the proper persons to recognize the importance of doing something to improve employee performance. If the political scientist does not know these things, then his first acts must be to get acquainted with the people who manage the public business in his state and community and give them reason to have confidence in his objectives and his ability.

One further suggestion the Committee would make—that efforts of college and university people to improve the public service through training will not flourish in the midst of professional and institutional jealousy. If the political science department intends to jockey the commerce school out of influence (or vice versa), the training program will certainly be of limited value and probably of short life. If one institution tries to get a monopoly on training in the area, it will probably lose face with its clients. The forthright way to proceed in planning an honest attack on the in-service training problem, whether for federal, state, or local government, would surely be to draw in representatives of various disciplines and various institutions of higher learning and establish a common pool of the abilities that are likely to be called into play.

V. ADVANCING PUBLIC UNDERSTANDING OF WAR AND POST-WAR PROBLEMS

The principal function of the political scientist is to advance understanding by investigating, writing, and teaching. His principal forum is the classroom. There is need now that he enlarge his audience.

There are many organized efforts to advance public understanding of war and post-war problems, and the political scientist may find it advantageous to join in any one, or more than one, of them. The Army is conducting programs to improve the soldiers' understanding of national war policy and the impact of war on society. Faculty people are used as lecturers. The U. S. Department of Labor, the Federal Works Agency, and the Office of Education are jointly engaged with the National Foundation for Education in American Citizenship in a program for education of prospective citizens. The Office of Education sponsors a School and Civilian Morale Service through which a great many colleges and universities have developed comprehensive programs for improving general understanding of war and post-war issues. The Northern Illinois State Teachers' College is one example of a small institution that has done an outstanding job of passing on the faculty man's knowledge and organizing ability to the leaders of the surrounding territory. The Universities of Colorado, Minnesota, and North Carolina afford other illustrations of aggressive leadership provided under the cloak of the Civilian Morale Service.

The foregoing are a few programs for adult education which have the official support of federal government agencies. There are other programs of nation-wide impact backed by private organizations with which the individual faculty member may associate himself. But any educational institution can have an off-campus educational program of its own, and each faculty man can have his own sphere of influence.

The Committee does not wish to lay down any pattern for education of the nation to the new world that is upon it. It wishes merely to state again, as it has earlier in this report, that the obligation of the political science profession is to supply specialized thinking upon public affairs, and to release that thought through media that will bring it to the attention of those who make public policy. In our system of government, the state of the public mind is highly determinative of public policy, and the political scientist should not be content until he knows that the fruit of his inquiry and analysis filters to the man in the street without loss of its integrity. Whether the political scientist shall organize forums, go on the air, speak before women's clubs, or write for the papers is a matter for individuals to determine.

This is not an exhortation for the political scientist to turn preacher. It is rather a challenge for him to distinguish fact from fancy and proof from wish as never before. If the college professor, talking in the community where he lives and is known, cannot speak forcefully about the issues that confront the country, where are we to find any semblance of freedom of speech? If the college professor will not announce his beliefs and identify them as beliefs rather than proved facts, how can we ask the politician to deal honestly with the people? If the college professor will not plunge into community life and join the discussion of the things that challenge the existence of the community, what right have we to expect others to do so?

VI. STRENGTHENING DEMOCRATIC INSTITUTIONS AND WAYS

Popular satisfaction with the conduct of government is the best assurance that democratic government will persist in the United States. This report has been concerned throughout with matters related to the strengthening of democratic institutions and ways, but there remain a few more things to be said.

Democracy involves an organization of the people which enables them to discuss issues in groups, thereby developing confidences which enable some to lead and make others content to follow. Who is to identify the leaders and potential leaders of the community and bring them together so that they may establish their claims to the confidence of one another and come to common agreement as to what issues are worthy of joint attack? Is this not a proper function of the college or university, which is relatively neutral among the issues that struggle for public adoption, and therefore is an acceptable meeting-ground for leaders who are not sure whether they are friends or enemies on the point at issue?

We constantly complain that our political leaders are decades behind in their analysis of public problems. We constantly complain that our political leaders are fearful about adopting a proposition until gossip in the street proves that it is respectable. But what do we do to see that at least some of our leaders are abreast of our best knowledge? What do we do to win the confidence of some of our leaders so that we may give respectability to the novel idea and make it a safe product for them to sell in the public forum? Are these not proper things for the faculty man to do, devoted as he is to democracy and willing to make some personal sacrifice to increase the likelihood that it will work?

Again the Committee is reluctant to make suggestions, believing that the imagination of individuals will guide them to the best ways of accomplishing purposes that support the democratic end. One may promote or establish a journal that deals with the public affairs of his state and the communities of his state in such a way as to build a common understanding of what is being done and needs to be done. Another will organize conferences at which leaders rise in understanding of their opportunities and responsibilities and grow in courage to meet them. A third will be content to serve as intimate counsel to one or more persons influential in public affairs. The Committee is only concerned that political scientists bear in mind that democracy will not work unless people are resolved to make it work, and that the war is not won unless the continuation of our democratic ways is assured.

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This war will not be fought and won in Washington alone, nor will the peace that is to follow. Least of all will it be won by devices which drag every possible professor of political science into the District of Columbia where he will be fortunate to find a bed in which to sleep, a desk at which to work, and a task that challenges his training and ability. At home, as well as in Washington, there is war work aplenty, and it is work for which the political scientist is fitted and which he can tackle in the environment where he achieves his greatest effectiveness. No student or teacher of politics who is loyal to his country and an honor to his profession will shrink from these undramatic but necessary tasks, even though some of his colleagues have managed for themselves a more glamorous setting in the nation's capital.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

Thirty-eighth Annual Meeting of the American Political Science Association. The problems of government in war-time will occupy a major part of the program of the thirty-eighth annual meeting of the American Political Science Association. The meeting will give public officials—among them several hundred former professors and instructors in political science and members of the Association—an opportunity to discuss with their college and university colleagues the urgent problems of policy and administration in our war-time government and the various plans that are being considered for the post-war world.

The meeting will be held in Chicago, December 28–30, in conjunction with the meeting of the American Society for Public Administration on December 27–28. Several joint sessions of the two societies will be held on December 28. As in former annual meetings, the programs of both societies will include both governmental officials and teachers and researchers in the fields of public opinion, public policy, law, international relations, and administration.

A number of members of the Association have inquired whether the annual meeting should not be cancelled in view of transportation difficulties. This question has been discussed by the President of the Association, the Secretary-Treasurer, the Chairman of the Program Committee, and the Editor of the REVIEW, who have sought the advice of leading public officials and officers of comparable associations. While the Office of Defense Transportation is discouraging large conventions held for social or entertainment purposes, no opposition whatever has been expressed to meetings which bring together those concerned with public affairs for the discussion of governmental policy and administration. On the contrary, meetings which afford opportunity for students of government and public officials to confer are looked upon as essential conferences and useful in the furtherance of the war effort. The officers of the Association are assured that they will be informed if the situation should change so radically that the Association's meeting would impair the war effort. In such a case, the meeting would be cancelled immediately and all members of the Association would be notified at once in writing.

On December 28, the birthday of Woodrow Wilson, who was president of the American Political Science Association in 1910, two general sessions of special interest will be held. Arrangements have been made for a luncheon session, to be held jointly with the Woodrow Wilson Foundation and the American Society for Public Administration, at which a nationally known speaker will appear. The presidential addresses of the American

Political Science Association and the American Society for Public Administration will be given on the evening of December 28.

In general, the program of the meeting will be as outlined in the August issue of the REVIEW (pp. 717–719). The headquarters will be at the Sherman Hotel.

In accordance with a procedure introduced two years ago, the nominating committee of the American Political Science Association has canvassed the membership for suggestions for nominations for officers for 1943, and at the December meeting it will offer the following list of nominees: president, Robert E. Cushman (Cornell University); first vice-president, John M. Gaus (University of Wisconsin); second vice president, Peter H. Odegard (Amherst College); third vice-president, Denna F. Fleming (Vanderbilt University); secretary-treasurer, Kenneth Colegrove (Northwestern University); assistant secretary-treasurer, Harvey Walker (Ohio State University); members of the Executive Council: Clyde Eagleton (New York University); Charles Fairman (Stanford University); V. O. Key, Jr. (Johns Hopkins University); Amry Vandenbosch (University of Kentucky); and Harold Zink (De Pauw University). The nominating committee consists of Charles M. Kneier (chairman), Alfred B. Butts, Charles G. Haines, Robert R. Wilson, and Benjamin F. Wright.

Suggestions or proposals from members of the American Political Science Association relating to revision of the Association's constitution and by-laws will be welcomed by the committee now working on the subject. They should be addressed to the chairman, Professor Robert E. Cushman, of Cornell University.

At the University of Chicago, Professor Charles E. Merriam has been appointed on the Walgreen Foundation to give his course on American political theory in the spring quarter of 1943.

Professor Herman Finer, who taught at the University of Chicago during the winter and spring quarters, 1942, has accepted an appointment on the staff of the International Labor Office and is stationed in Montreal.

At the University of Michigan, the leave of Professor J. R. Hayden has been extended for another year in order that he may continue in the Office of Strategic Services in Washington.

Professor William P. Maddox, of the University of Pennsylvania, has accepted an assignment with the Office of Strategic Services and is now attached to the U. S. Embassy in London.

Professor Floyd W. Reeves, formerly on leave from the University of Chicago, has returned for part-time work during the present academic year. He, however, continues his connection with the National Resources Planning Board.

Professor Charles M. Kneier, of the University of Illinois, served during the summer as a member of the staff of the War Relocation Authority in the capacity of consultant on the local government of relocation centers.

Professor Ethan P. Allen, of the State University of Iowa, has been granted leave of absence for one year to assume a position as senior business adviser in the Office of Civilian Defense at Washington.

At the University of California at Los Angeles, Professor H. Arthur Steiner will serve as chairman of the department of political science until Professor J. A. C. Grant's return from Mexico in February. Dr. Russell H. Fitzgibbon has been promoted to an associate professorship.

Dr. James J. Robbins, associate professor at the American University, has been appointed dean of the Graduate Division in the School of Social Sciences and Public Affairs.

Sessions of a Harvard-Princeton Conference on Public Policy in Education, held in Cambridge during July, were presided over by Professors William S. Carpenter and John F. Sly, of Princeton.

Dr. Richard C. Spencer, formerly of the Municipal Finance Section of the Division of Research and Statistics in the Work Projects Administration, transferred early in July to the Planning and Analysis Section of the Division of State and Local Government in the U. S. Bureau of the Census.

Mr. Albert Lepawsky, director of the Institute of Public Service at the University of Chicago, has been granted a leave of absence for the duraton of the war and has accepted a commission as captain in the Army Air Corps. After four weeks of training at Miami, he was assigned to Washington.

At the University of Michigan, Mr. Esson M. Gale, has been appointed acting Orin O. Murfin professor of political science and will give courses on Far Eastern affairs in place of Professor Joseph R. Hayden. Drs. Lionel H. Laing, formerly of the College of William and Mary, and Wolfgang H. Kraus, formerly of Smith College, have been appointed assistant professors to fill vacancies created by the absence of Professors Harlow J. Heneman and Lawrence Preuss.

Dr. Howard Penniman, a member of the department of political science at the University of Alabama during the past academic year, has accepted an instructorship in government at Yale University.

Professor B. A. Arneson, of Ohio Wesleyan University, spent the summer in Washington as review and negotiations officer in the U. S. Civil Service Commission.

War-time vacancies at the University of Wisconsin have been filled for the current year by the appointment of Professors J. B. Shannon, of the University of Kentucky, and David Fellman, of the University of Nebraska, as visiting lecturers.

Mr. Marion W. Boggs, recently associate professor of political science at Macalester College (St. Paul), has joined the staff of the Division of Special Research, Department of State.

Dr. Charles P. Harper has resigned as instructor at Glenville State Teachers College to accept a position as first state supervisor of occupational information and guidance for West Virginia.

Dr. C. Leroy Stephens, of Ohio State University, has been appointed annual instructor in the department of government at Harvard University for the present academic year.

Dr. Heinze Guradze has been appointed assistant professor of political science at Park College, Parkville, Mo.

Dr. Shepherd L. Witman, of the University of Omaha, has accepted an assistant professorship at New Jersey College for Women, Rutgers University.

During the recent summer session, Professor Clyde Eagleton, of New York University, was a visiting lecturer in the department of government at the University of New Mexico. Dr. Thomas C. Donnelly, head of the department of government, has taken leave for the year to serve as state consumers' relations officer for the OPA.

Professor A. T. Edelman has been recalled to military service from the University of Kentucky and, with the rank of captain, is attached to the Special Services Branch of the War Department, carrying on research on army morale. Professor E. G. Trimble, now with the President's Committee on Fair Employment Practices, will continue on leave until January 1.

Professor Benjamin E. Lippincott, of the University of Minnesota, has been commissioned a 1st lieutenant in the Army Air Corps, and Mr. Charles H. McLaughlin, 2nd lieutenant. Both are in active service.

The University of Michigan has granted a year's leave to Professor Lawrence Preuss, now serving as assistant divisional chief in the Department of State, and to Professor Harlow J. Heneman, commissioned as a captain in the Military Intelligence Service of the War Department.

Dr. H. E. Cohen, who taught at the University of Chicago during the winter and spring quarters, 1942, has accepted an appointment as administrative analyst with the FPHA.

During the past summer, Professor O. W. Wilson, of the University of California, conducted surveys of the police systems of Hartford, Conn., Syracuse, N. Y., and Louisville, Ky.

A training institute for municipal attorneys, planned by Mr. Frederick Macmillan, of the Wisconsin League of Municipalities, was held at the University of Wisconsin Law School August 15–22 under the auspices of the Wisconsin vocational schools.

Dr. Francisco A. Mendieta, superintendent of banks in the Republic of Nicaragua, has been appointed dean of the School of Economics and professor of money and banking in the Central University of Nicaragua.

Dr. Merritt B. Pound, head of the department of political science at the University of Georgia, has secured leave of absence to accept a captaincy in the Army Air Corps. The department of political science was created at the University of Georgia in 1941. Other members of the department are Mr. M. Clyde Hughes and Drs. Willis H. Bocock, J. H. T. McPherson, and Albert B. Saye.

Professor Cromwell A. Riches has resigned his position at Goucher College to accept a research and analysis appointment with the Foreign Empire Unit in the Bureau of Foreign and Domestic Commerce.

Professor Charles B. Hagan, of the University of Illinois, has been granted a year's leave of absence to enable him to accept appointment as visiting lecturer at Harvard University.

Dr. Arnaud B. Leavelle, formerly an instructor at Swarthmore College, has been appointed to an instructorship at the University of Illinois.

At the University of Michigan, Dr. Edward H. Litchfield has been reappointed lecturer in political science to assist with courses in public administration; and Dr. Clark F. Norton, of Montana State University, has been appointed instructor.

At the University of Tennessee, Professor Kenneth O. Warner has been granted leave of absence to serve as director of personnel for OPA, and Professor Lee S. Greene has been named acting head of the department of political science.

At the University of California (Berkeley), the following appointments have been announced: Dr. Hans Kelsen, visiting professor of political science; Dr. Victor Jones, formerly of the Illinois Institute of Technology, as assistant professor; and Messrs. Jacobus ten Broek and Boynton Kaiser as instructors.

Government House, at Haverford College, was dedicated on October

10 as a focal point for instructional and other activities in the general field of government. Its development has been made possible by a gift from the Triangle Society of the College. The National Foundation for Education will maintain an office in the building.

Mr. Thomas P. Jenkin, of the University of Michigan, has accepted a position in the University of California at Los Angeles.

Dr. George W. Willoughby, who received a doctor's degree at the State University of Iowa during the past summer, has been appointed professor of political science at New Mexico State Teachers College, Silver City.

Dr. Robert M. W. Kempner, of the University of Pennsylvania, serves as expert of the government in the field of Nazi police and administrative techniques in spy and sedition trials.

Professor Arthur E. Bestor, Jr., formerly assistant professor of history, Teachers College, Columbia University, has been appointed assistant professor of humanities at Stanford University.

Mr. James W. Drury, of Princeton University, is in service in the U. S. Army as a 2nd lieutenant.

A conference on "Social Education in Wartime and After" will be held in New York City during the Thanksgiving holiday, November 26–28. The conference will constitute the twenty-second annual meeting of the National Council for the Social Studies. Government officials and social scientists will meet with teachers from elementary and secondary schools to consider what policies and practices should govern social-studies teaching in the United States during the war. Conclusions of the conference will subsequently be published by the National Council. Anyone interested in attending all or part of the conference should write for further information to Wilbur F. Murra, executive secretary, National Council for the Social Studies, 1201 Sixteenth St., N. W., Washington, D. C.

Professor Robert E. Cushman, of Cornell University, has taken the chairmanship of a special committee set up under the auspices of the Social Science Research Council, and sponsored by that body's recently created Committee on Government, to deal with problems of research in the area of civil liberties. The immediate assignment of the special committee is to prepare an Outline of Research in the field, a first requisite for which is a full list of major organizations and agencies, official or private, which are studying or doing anything relevant to the problem, and also of studies in the field either projected or actually going on. To this end, all persons engaged in or knowing of activities of the sort are urgently invited to communicate with Professor Cushman.

A new course, to some extent integrating the various disciplines in their contributions to an understanding of the American scene, is being experimented with at the University of Washington. Each of half a dozen departments offers an "American Tradition" course. Instruction and examinations are conducted independently, but a series of evening lectures on the same general theme may be attended by all students registered in the various departments.

Under the auspices of the Faculty of Political Science of Columbia University, in conjunction with the Parker Institute of International Affairs, a program of training in international administration has been instituted at Columbia, primarily to aid in the development of personnel capable of performing tasks of an administrative nature which Americans may be called upon to perform in such countries or territories as the United Nations may liberate or occupy. These tasks may be envisaged as ranging from those of the officer charged with maintaining security and administering temporarily the governments of the areas occupied, to those of the economic expert assisting in the rehabilitation and management of local economic institutions, or of the social worker who administers relief. The program is not concerned with the framing of plans or policies, but solely with the training of personnel to help in administering whatever plans are adopted.

During the past two years, at the State University of Iowa, a joint seminar has been conducted by the departments of political science, history, sociology, and economics. Enrollment has been limited to three candidates for the Ph.D. from each of the four departments. The staff consists of a representative from each area, and Professor Kirk H. Porter has represented political science. Members of the seminar present for discussion papers intended to raise problems of vital interest to advanced students in all fields concerned. In furtherance of this plan of coöperation, the four departments are offering during the present academic year a course entitled "The World Today," open to juniors and seniors majoring in one or another of the four departments. The class meets three times a week, one of the sessions being an evening public lecture. Lecturers are drawn from the University staff and deal with international problems of political, social, and economic character growing out of the war. Two discussion sessions are conducted each week by staff members from each of the four departments; and Professor Jacob Van der Zee represents political science. On the freshman level, three small experimental sections of first-year students are being conducted by staff members from political science, economics, and sociology. In these, an effort is made to present "basic concepts of social science," as distinguished from the conventional offerings in introductory courses in the three areas. In this work, Dr. Jack T. Johnson represents the department of political science.

BOOK REVIEWS AND NOTICES

Essays in Honor of Charles E. Merriam: The Future of Government in the United States. EDITED BY LEONARD D. WHITE. (Chicago: The University of Chicago Press. 1942. Pp. ix, 274. $3.50.)

Two of the twelve essays which compose this volume lie somewhat outside the scope of the title—the future of government in the United States. The first is by Mr. Merriam himself on the nature and development of his intellectual interests. It is a part of a promised volume on "The Education of Charles E. Merriam," which all his colleagues will await with impatience, for this informing and whimsical study is a forecast of delights to come. The second essay outside the main center of concern is Mr. Schuman's chapter on "World Politics and America's Destiny," which deals with his vision of America's mission relative to "the redemption of mankind from worry, want, and war in the greater republic of the future . . . the coming federation of the free."

The remaining ten essays bear directly on the internal affairs of the United States. One of these is general: Mr. Lasswell's discriminating paper on methods—"The Developing Science of Democracy." Another is broad and philosophical: Mr. Cohen's contribution on the ancient theme of "Sovereignty." Three turn on the subject of politics and politicians: Mr. Rosten's "Political Leadership and the Press," Miss Overacker's "Trends in Party Campaign Funds," and Mr. Gosnell's "The Future of the American Party System." To administration three papers are devoted: Mr. Key's "Politics and Administration," Mr. Harris' "The Future of Administrative Management," and Mr. White's "The Public Service of the Future." Mr. Lepawsky's essay on "The Future of Urbanism" stands in a class by itself. So does Mr. Vieg's "Developments in Governmental Planning."

In general, the papers reflect an intense concentration of thought, wide knowledge, a strong sense for the real, and a determination to bring out helpful and workable suggestions for action. They are written in a style clear and incisive—a style which, in my opinion, marks a decided advance on most of the works written by members of the older generation. Here, then, is encouraging promise, for the power of style is the power of thought.

From the above analysis it is evident that the body of the volume before us does not exactly fill the amplitude of the title—the future of *government* in the United States. Government is more than politics, administration, urbanism, planning, and the redemption of multitudes outside the United States. It includes the Executive, which is power transcending administration. It includes the Judiciary, so significant for liberty, one of the ends of government. It includes the Legislature, so strangely neglected by students of political science in the United States for more than fifty years.

Hence, for me, what is left out of this volume is as fateful in its significance as all the excellence—I may say, indeed, high excellence—of the papers embraced within its pages. If these omissions were due to exigencies which arise in connection with every symposium, they might be passed over as negligible. But they represent, I fear, a disregard of certain fundamentals in American government which characterizes the dominant thought of political scientists in the United States, or at least the major portion of them. That disregard, as I am given to see things, does not bode well for the future of representative and constitutional government in the United States.

If Mr. Merriam's former students, well trained as they undoubtedly are, would bring to the subject of the Executive, the Legislature, and the Judiciary the spirit and the competence which they so admirably and cogently demonstrate in these pages, their ancient colleague, the undersigned, would count his generation doubly fortunate.

Charles A. Beard.

New Milford, Conn.

The Constitutional History of the United States. By Homer Carey Hockett. (New York: The Macmillan Company. 1939. Two volumes. Pp. 417, 405. $3.00 each.)

These volumes are the first two instalments of what is intended to be a three-decker work covering the initial 150 years of American independence. The work retravels in the main the ground covered by Professor McLaughlin's volume published in 1935, and with substantially the same emphases. It is predominantly a history of controversy, and particularly of the controversy over states' rights and national power.

Professor Hockett's approach to this subject is indicated by his contention (I, pp. 260–601) that the Constitution as it came from the framers was "neutral" with respect to the question of whether "the Union which it formed was a confederation of sovereign communities or one sovereign community," and was unclear as to the location of the authority to settle disputes between the federal government and the states regarding their respective powers. In taking this position, Professor Hockett seems to me to miss the most significant single development in the pre-Civil War interpretation of the Constitution—what Marshall termed its "confederatization."

The evidence is ample to show that its framers did not regard the Constitution as the work either of "sovereign communities or of one sovereign community," for they regarded such communities not as the *cause* but as the *consequence* of constitutions. Furthermore, holding as they did that all just governments rest on the consent of the governed, they of logical necessity imputed the Constitution, once it was adopted, to the consent of the *human beings* governed under it. This is precisely the theory, for instance, which Marshall sets forth in the opening paragraphs of his opinion in McCulloch v. Maryland, which Professor Hockett entirely misapprehends.

And how anybody, with the "necessary and proper" clause and the "supreme law of the land" clause before him, can contend that the Constitution is unclear on the question whether the power finally to interpret it was intended to belong to the national government, quite escapes my comprehension. The difficulties which in time arose in this respect are all traceable to the notion that the Constitution was some sort of emanation from state "sovereignty"; nor would the most explicit language have availed—indeed, it *did not* avail—to lay this arrant and preposterous ghost. For whatever the Constitution, considered as the voice of "sovereign states" might say, they could always take it back, "sovereignty" being "inalienable."

To the political scientist, Professor Hockett's work thus far is a double disappointment. It is a repetition of "far-off unhappy things, and battles long ago," which have long since lost most of their significance for this generation; and it is an opportunity missed to attempt the kind of constitutional history we really need, a history of the development of today's operative institutions. Perhaps in his third volume, where he will be more on his own, Professor Hockett will still be able to justify his project. At least it is something that he has planned to concede so much space to the last fifty years.

EDWARD S. CORWIN.

Princeton University.

Democracy, Liberty, and Property; Readings in the American Political Tradition. EDITED BY FRANCIS W. COKER. (New York: The Macmillan Company. 1942. Pp. xv, 881. $4.25.)

This collection of writings representative of American political thought differs from previous ones not so much in the materials reprinted, although there are some important additions, as in the scheme of organization. It is divided into four sections, dealing with "(1) the problem of locating political control, (2) the lines to be drawn between governmental authority and individual liberty, (3) the nature and limits of property rights, and (4) the problem of political change." Within each section the arrangement is chronological.

As a result of this method of arrangement, there is a definiteness of focus upon these essential aspects of American thought not elsewhere to be found. If certain traditional and not unimportant parts of the story, such as federalism and the separation of powers, are only incidentally touched upon, it may be answered that the substantial issues which usually conditioned discussions of those problems are presented in generous proportions. Almost all of the principal theorists, from the time of Winthrop, Cotton, and Williams, through the classical era of Jefferson, Madison, the Adamses, and Paine, the period of the establishment of the new government, and that of the controversies over slavery and the broadening of democracy, are adequately represented. I regret that there are only two brief selections from the greatest of American debates on politics—the Convention of 1787—and only two more from the greatest of American books on politics—*The Federalist.*

Only in Part III, "Government and Property Rights," are there many selections drawn from recent literature. In Part I, twenty out of twenty-five date from before the Civil War; in Part II, eighteen and one-half out of twenty; and in Part IV, five out of six. In the third part, on the other hand, eighteen of twenty-seven are from the latter period, fifteen of them having been written since 1900. The authors represented include Cleveland, Sumner, Veblen, Beard, the Roosevelts, LaFollette, Wilson, Wallace, Hoover, Thomas, and Becker. This temporal disparity indicates the shift in the subject-matter of political discussion in America. It also helps to make evident the difficulties of an analysis which will indicate the interconnections between the several subjects of the book. For there are very real interconnections. Controversies involving political control and civil liberties have nearly always grown out of, or had an intimate connection with, those sources of faction of which Madison wrote in the tenth *Federalist:* religion, personalities, trivialities, and, especially, "the various and unequal distribution of property." The relations between the location of sovereignty, the scope of civil rights, and the governmental control of property rights have been particularly close during the last three generations, and any discussion of these several problems which avoids the problems of relationships will necessarily be inadequate.

BENJAMIN F. WRIGHT.

Harvard University.

America's Strategy in World Politics. BY NICHOLAS J. SPYKMAN. (New York: Harcourt, Brace and Company. 1942. Pp. xvi, 500. $3.75.)

This forceful and forthright exposition of power politics symbolizes the amazing swing of the academic pendulum which has taken place since the years following the last world war. One recalls as from a dim and remote age the utopian internationalism of that period: the mushroom growth of college courses on peace, international government, and the League of Nations; the hopeful projects for codifying, extending, and enforcing international law; the interminable discussions of procedures for outlawing war and for punishing aggressors. During those sunny years when Germany lay prostrate and when National Socialism was no more than a tiny cloud on the horizon, American political science gave little attention to the power factor in international relations, and practically none at all to fundamental changes then taking place in world power relations as a result of rapid and continuing developments in military and industrial technology. Except for the descriptive chapters on national defense in government textbooks, the study of military policy and administration was almost totally neglected. The development of a new school of geopolitical thought in Germany passed largely unnoticed. Mackinder, Kjellen, and Haushofer were names virtually unknown to political science in America.

The rapid disintegration of the post-1918 order, beginning with the world economic crisis, gave new direction to the study of international relations. American political scientists began to give serious attention to questions of state power, to the conditions of its exercise, and to its rôle in international politics. This reviewer pioneered such a course in political geography at Stanford.[1] Colonel Beukema introduced geopolitical studies at West Point. Textbook writers began to devote more space to geography, technology, and other power factors. The catastrophic march of events in the later '30's exerted an ever-increasing pressure in this direction, leading to large-scale projects of fundamental research, among which Professor Spykman's study is one of major importance.

This study was projected long before the Japanese attack on Pearl Harbor, to meet the "need for a new approach to the question of isolation versus intervention." The finished product is the first comprehensive, systematic "analysis of the position of our country in terms of geography and power politics." The book falls into two major divisions. Part I ("The United States and the Balance of Power") surveys the geopolitical relations of the United States with Eurasia-Africa as a whole and with the individual power centers in this area. In the second and larger part ("The Struggle for South America"), the author analyzes and deflates the isolationist strategy of hemisphere defense.

The main thesis of the book runs somewhat as follows: International politics is a ruthless struggle for power among the sovereign units of the national state system (which parenthetically is no system at all, but a condition of international anarchy). War—which in our time has come to mean total war—is inherent in this system. War is the dominant instrument of national policy. A country's geographical domain is the military base from which it wages war and from which it prepares for future wars during the temporary armistice called peace. A country's location and resources determine its military strategy in war-time. Those same geographical factors should determine its political strategy in peace-time.

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[1] See "Political Geography as a Political Science Field," in this REVIEW, May, 1931, pp. 439 ff.

Historically, the American people have enjoyed a high degree of military security, not only because of their own power potential, or because of their geographical isolation from other power centers, but also because of the mutual rivalries and balance of power which restrained the aggressive ambitions of European and Asiatic empire-builders. Twentieth-century developments in transport and in weapons, in conjunction with other causes, have brought this historic power balance crashing down in ruins. There is real danger that the resources of Eurasia-Africa, which in the aggregate exceed our own, will be integrated by men of large ideas, insatiable ambition, dynamic energy, and poisonous hatred toward the United States. If this happens, we shall be strategically isolated and encircled, and may be compelled to fight for national survival against superior enemies on several fronts. Against this threat, hemisphere defense is held, for military, political, economic, and psychological reasons, to be no defense at all. America's strategy in this crisis is rather to restore, and then to maintain by continuing intervention, a new political equilibrium in both the trans-Atlantic and the trans-Pacific power zones. As to Europe, it is specifically contended that American security requires a strong independent England, a strong but reconstituted Germany to offset the enormous power potential of Russia, and a regrouping of the weaker European states into several subsidiary power constellations. For the Far East, it is proposed that the United States foster a second balance of power by supporting a chastened and reconstituted Japan against the rising threat of Chinese hegemony over all eastern Asia.

All this raises many questions. How, for example, does this proposed strategy accord with the aims of other major partners in the common cause against the Axis? Will the United States emerge from this war in any position to dictate terms to Russia and to China? Has the author recognized sufficiently the economic and psychological overtones of national policy? History, as this reviewer reads it, offers little hope that guns and a balance of power will provide a stable world unless society can also provide personal security and a sense of significance to the common man in all countries.

Persons previously acquainted with the literature of geopolitics, sea power, and military strategy will recognize many familiar terms, phrases, and ideas, though these are rarely attributed to their sources. The text has no accompanying documentation, but there is a well-selected bibliography. The maps are excellent, and the index adequate. Viewed in the large, Professor Spykman has written a challenging book which should be read and pondered by every political scientist. This book has already provoked widespread discussion. And one may safely predict that it will leave an indelible imprint upon the strategy of American statecraft.

HAROLD H. SPROUT.

Princeton University.

American Regulation of Arms Exports. BY ELTON ATWATER. (Washington: Carnegie Endowment for International Peace. 1941. Pp. x, 287. $2.00.)

The practice of the United States in respect to the regulation of the export of arms has been subjected to thorough and scholarly examination by Professor Atwater. Although regulatory measures of such character did not receive much popular attention until the "neutrality" legislation debates of 1935–39, there is in fact a considerable body of earlier practice on the subject, and it forms an important phase of American foreign policy.

For purposes of analysis, Professor Atwater divides American regulatory practice into three overlapping periods. From 1793 to 1917, the United States followed for the most part the Jeffersonian principle of permitting unrestricted arms exports by its citizens. Several arms embargoes were laid during this period, as those of 1794, 1797, and 1862; but they were for the purpose of conserving arms supplies and were, therefore, measures of self-defense. It is common knowledge, of course, that the policy of freedom of sale and export of arms by citizens was strongly reiterated by the American government during World War I.

Beginning in 1905 with an embargo on the export of arms and munitions to the Dominican Republic, the United States has on several occasions restricted arms exports for the purpose of promoting stability and discouraging revolution. In addition to the case referred to, such restrictions have been adopted at various times against shipments to Mexico, China, Cuba, Honduras, Nicaragua, and Brazil.

Finally, since 1934, arms embargoes have been adopted in an endeavor to discourage foreign wars and to keep the United States out of war. This policy first appeared in the Chaco embargo of 1934–35, and was continued in the legislation adopted in 1935 and 1937.

Although the heated controversy over "neutrality" legislation, which no doubt gave rise to Professor Atwater's study of arms regulations, is now buried by reason of active American participation in the war, the volume should be of value in the framing of post-war regulations. The author has examined each instance in which an embargo has been imposed, ascertained its purpose, the methods of its application, its success or failure in accomplishing the ends sought, and the factors responsible for its termination. Although sweeping generalizations concerning which policies and practices should be followed have been avoided, certain conclusions stand out from American experience: (1) If an arms embargo is to be effective, it should be administered through a licensing system, such as the United States has employed since 1935. (2) An arms embargo alone cannot be a very potent method of preventing war, or even of discouraging revolution. (3) To be most effective, an embargo should represent the coöperative effort of nations rather than unilateral action.

Professor Atwater's discussion of the right of a neutral state to adopt or repeal an arms embargo forms an interesting part of the volume. However, the reviewer hopes that in the post-war world this part of the work will be of historical interest only.

CROMWELL A. RICHES.

U. S. Department of Commerce.

Public Policy; A Yearbook of the Graduate School of Public Administration, Harvard University. EDITED BY C. J. FRIEDRICH, EDWARD S. MASON, AND PENDLETON HERRING. (Cambridge: Graduate School of Public Administration. 1942. Pp. 275. $3.00.)

The third volume of essays of the Graduate School of Public Administration maintains the high standards set by the previous volumes, although it is much shorter in content. The material in this volume is grouped into three parts dealing with "War Morale and Civil Liberties," "Labor and the War," and "Some Problems of War Finance and Government."

Gordon W. Allport and Edward L. Bernays present methods of strengthening and integrating our national morale and some systems of measuring its effectiveness. The longest, and by all means the best, essay in the volume is on "Civil Liberties in a period of Transition," by David Riesman. This excellent historical exposition of the evolution of our civil liberties deserves a much larger reading than it would receive either in this volume or the series of which this article is the introduction. Alan B. Overstreet completes the first part with an excellent companion treatise on "The Administration and Civil Liberties in War-Time." Civil liberties are inseparately connected with civilian morale and war-time efficiency, and the Administration should avoid a recurrence of the confusion and abuses of the last war.

The three essays in Part II are by D. H. Davenport on "Mobilization of Labor Resources for the Defense Effort"; Earl G. Latham on "The National Defense Labor Policy—Supply, Wages, and Strikes"; and Judge Charles E. Wyzanski, Jr., on "Labor Disputes During the War." All of these studies are relatively short and, as their titles indicate, deal mainly with problems of the pre-Pearl Harbor period, although Judge Wyzanski delivered his contribution as a speech at Northwestern University in January.

Part III, on "Some Problems of War Finance and Government," includes articles on "The Rôle of Statistical Forecasts in Planning for Defense," by James Tobin; "The Control of Industrial Mobilization," by Wayne C. Grover; "National Defense and Local Government; A Case Study of the Quincy, Massachusetts, Area," by Laurence L. Barber, Jr.; and "Changes in Economic Structure Arising Out of the War and Their Implications for Public Policy," by Alvin H. Hansen. Tobin deals with the two problems of estimating the national income and the civilian demand for commodities. Grover shows the relations between industrial mobilization, government, and industrial personnel, the methods of planning and awarding contracts, and the competition which arises when planning and proper allocations are absent. The case study of Quincy by Barber is an excellent example for dozens of similar studies which are being made, or should be made, by properly qualified students of our localities affected by the expansion or installation of industrial or military establishments. Hansen is concerned with solving the phenomena of depressions and in some manner dealing with the advancing tide of a totalitarian economic order.

All in all, these essays are provocative and, in many respects, strikingly prophetic. This volume will find a place beside its companions and mark the gradual transition from the economy of peace and its relatively insignificant problems to that of war with its need for immediate and weighty decisions based on past experiences.

EDWIN A. COTTRELL.

Stanford University.

Metropolitan Government. BY VICTOR JONES. (Chicago: The University of Chicago Press. 1942. Pp. xxiv, 364. $4.00.)

Among the various problems of municipal government which have occupied the attention of political scientists during the past two or three decades, few are more challenging than that of the effective organization of government of metropolitan areas. For, although the existing highly decentralized type of governmental organization of these areas is signally defective, yet it has proved exceedingly difficult to obtain general acceptance of any alternative plan. In 1930, the National Municipal League published a comprehensive survey of this problem by the reviewer. Now the Social Science Research Committee of the University of Chicago makes public a volume on the same subject by Dr. Victor Jones. In traversing the same field, Dr. Jones, however, has availed himself of new material and here and there throws some new light on the subject. Wisely, he has concerned himself with the interpretation of existing data, rather than with the collation of new data.

The first three chapters describe the rise of the metropolitan communities and the development of the existing medley of local governments therein. The process is identified as one of concentration of population in industrial centers, the dispersal of this population from the congested sections of the central city into the suburbs, and the incorporation of the latter into towns, villages, and cities with a view to providing the suburban populations concerned with the municipal services required by them. It is shown that this multiplication of local governments, while adequately providing for the more minute and special requirements of the various local groups within the metropolitan population, has failed adequately to take care of the broader requirements of that population—more particularly, that it has tended to accentuate the existing tendencies toward unplanned and often uneconomic distribution of the population throughout the area. The author applies the term "disintegrated" to this form of multiplicated or "subdivided" governmental organization, although it is historically scarcely applicable thereto, inasmuch as disintegration implies the preexistence of an integrated condition—and such really never existed.

The bulk of the book is devoted to a discussion of proposed solutions. Those involving no structural changes in the existing governmental set-up, such as inter-municipal coöperation, the creation of special metropolitan authorities, and the extension of federal and state services, are disposed of quickly. They are rightly characterized as being mere stop-gaps, valuable at best as stepping stones or complements to real solutions. More space is devoted to the discussion of remedies requiring structural changes, such as the reorganization and municipalization of the metropolitan county, city-county consolidation, and the creation of a federated metropolitan government. These solutions are considered to hold considerable promise for the future. By contrast, the possibility of solving the problem by way of complete absorption by the central city of the suburbs through annexation is discounted. The enactment during the past twenty or more years of constitutional and statutory restrictions against annexation is held to have made resort to this expedient much more difficult.

One of the prime obstacles to any type of comprehensive integration of government in metropolitan areas is said to be the unsympathetic attitude toward it of the rurally-minded state legislators who "fear any divergence from the usual form of government or the usual pattern of intergovernmental relationships, considering it a precedent which in time will adversely affect their interests in their own localities," and who, moreover, are afraid that the programs in question will increase the political power of the central city. It is shown that not all of the suburban dwellers are necessarily opposed to programs of metropolitan governmental integration and, on the other hand, that not all of the dwellers in the central city are necessarily in favor of it. The author believes that a boldly and intelligently conceived and ably presented program of such integration may yet win popular approval and overcome all obstacles thereto in the state legislative body. He insists, however, that the advocates of such programs, if they wish to succeed, must learn to employ at least as effective propaganda techniques as those usually employed by the opponents of such plans.

The book is well written and is profusely annotated. Although in no way original in its main conclusions, it is a very effective restatement of the problem, and should be widely read. For having sponsored this work, Professor Merriam and the Social Science Research Committee of the University of Chicago deserve the gratitude of all persons interested in the progress of municipal government.

PAUL STUDENSKI.

New York University.

From Relief to Social Security. BY GRACE ABBOTT. Chicago: The University of Chicago Press. 1941. Pp. vi, 388. $2.50.)

The State Becomes a Social Worker. BY ARTHUR W. JAMES. (Richmond: Garrett and Massie. 1942. Pp. xiv, 368. $3.00.)

The titles of both of these excellent volumes are in a certain sense misleading, for each is a collection of addresses, papers, and reports instead of a logical, developmental history of public welfare. Both have the advantage and disadvantage of the documentary source-books which they are, for on the one hand they provide important source-materials in the comparatively new field of social work, but on the other hand they fail to present a clear picture of trends or historical development—a disadvantage, be it remarked, greatly overbalanced by their advantages. In the presentation of such source material, the way has been paved by the faculty of the School of Social Service Administration of the University of Chicago, of which Miss Abbott was a distinguished member during the last years of her life. The materials which they have published for the use of students of social work have constituted a major reason why the training of such students has been raised to a professional level.

An even more important reason for the Abbott volume is found in the fact that it is by Grace Abbott. As she was one of the great public welfare pioneers in American life, anything from her pen contributes immeasurably to our knowledge and thinking concerning the development of social welfare and public administration in the United States. Her perspective and breadth of vision were so great that, combined with her practical experience as chief of the Children's Bureau, there is a value in anything she had to say on the subjects of social work and public welfare organization and administration, in any of their manifold ramifications. Ably edited by Miss Abbott's sister, Dean Edith Abbott, the present volume serves to highlight some of Miss Abbott's major contributions to social thinking in these fields. The excerpts from her testimony before congressional committees are particularly noteworthy in their incisive directness as well as in their vision, though at one point (pp. 202–204) her championship of a tax-credit instead of a grant-in-aid for unemployment compensation legislation was, in the eyes of many, ill-advised.

Save for the address on "The Public Protection of Children," delivered as a presidential address before the National Conference of Social Work in 1924, the present papers were written during different periods of the recent ten-year depression. Yet they look ahead to situations which have now become an accepted part of our social thinking. For instance, today, when civil service is becoming the order of the governmental hour, it is important to note Miss Abbott's realization of the connection between the development of civil service and the rise of adequate public welfare. Again, her statement of belief is constantly finding more and more complete fruition: "I confess that I have always believed that if the needs were to be met adequately, the state must eventually assume the responsibility, and that the administrative problems could be solved only during the process of state administration and not before this responsibility was undertaken."

The James volume is in the same tradition of documentary sources, for the most part by the commissioner of public welfare of Virginia, but contributed to by others in the field of public welfare administration. The book is not intended to be a history of public welfare, but, as the author says, aims to show "what the situation is, how it got that way, and what can be done about it" in the state of Virginia. The author was a member of the Department of Public Welfare of Virginia from its inception in 1922 until 1938, serving in various technical capacities before his appointment as commissioner. That very service occasionally makes him fail to see the forest for the trees and leads him to include among his other materials of genuine and widespread public welfare interest material that is either ephemeral or of interest only to a local public. For instance, Chapter 7, on "The Personnel of the Virginia Public Welfare Department," even as a documentary source, is too much a mere statement of personalities to cast any real light on either personnel practices or administrative organization. The volume jumps from the general to the particular and back again in a manner frequently disconcerting. Although students of public welfare organization and/or of specific public welfare programs will find much of value in the book, much of it is too intermingled with purely local problems and situations to be the real "administrative interpretation" which it attempts to be.

JANE PERRY CLARK CAREY.

Barnard College.

The Inter-American System; A Canadian View. BY JOHN P. HUMPHREY. (Toronto: The Macmillan Company of Canada, Ltd. 1942. Pp. xi, 329. $3.00.)

In recent discussion of inter-American relations, Canada has usually been omitted, thus rendering the very term "inter-American" or "pan-American" inaccurate. Books have appeared under such titles as "Good Neighbors" without even a passing reference to the Dominion. The Office of the Coördinator of Inter-American Affairs has confined its activities to the South and Central American republics, although the executive order by which it was created clearly defined its jurisdiction so as to include the whole hemisphere. All this has been due, not merely to the mistaken judgment of those responsible, but also to the self-imposed isolation of Canada from the official inter-American system in the past. This book—the first on this subject of this hemisphere—ought to make clear to all Americans (including Canadians) the rôle that Canada has played, and could play, in the affairs of this hemisphere. The eventual association of Canada in the inter-American system has been taken for granted in the United States and has recently been urged by prominent American writers. Professor Humphrey leaves no doubt that he favors immediate Canadian entry into the system. Unfortunately, he does not make clear, for the uninitiated reader, whether he voices merely his own viewpoint or a general Canadian attitude. In truth, the past five years have witnessed increasing sympathy in Canada with the idea of Canadian membership, but no general or official acceptance. Inexplicably, Mr. Humphrey does not quote a significant statement made by the Canadian prime minister in the House of Commons on March 30, 1939, in which Mr. King formally declared that, while unfavorably disposed to immediate participation in the Union of American States, his government was ready to give consideration to such a step in the future.

The bulk of Mr. Humphrey's book is devoted to a survey of the entire history of the inter-American system, with two chapters—the first and the last—on the actual and possible relations of Canada to this system. The historical survey is a careful digest of the main conventions and resolutions of previous conferences, for which the author, with his legal training and background, is eminently fitted. To the reviewer, there seems to be lacking, however, an integration of these developments with the broad trend of affairs in the world and the hemisphere during the past century, and, in particular, an interweaving of Canadian developments and interests with those south of the 49th parallel. Apart from occasional references to Canada in the body of the book, Canada's rôle is treated separately in the first and last chapters, both of which contain an interesting analysis of the implications of Canadian membership in the Union. In the historical survey, the writer brings out very well the striking changes of American trade policy and the switch from Dollar Diplomacy to Good Neighborliness, the careful avoidance of political issues by the Conferences down to 1928 and the concentration on such issues thereafter, the gradual change in the nature of the Union as it ceased to be an American "Colonial Office," the gradual growth of a multilateral interpretation and application of the Monroe Doctrine instead of the original unilateral approach, the replacement of neutrality by belligerency as the general policy of the system during the war period, and so on. In addition, the writer has made an admirable analysis of other topics dealt with by the system—arbitration, tariff barriers, collaboration with the League, cultural and technical coöperation, etc. Would it not have been possible to analyze thoroughly Canada's policy at each of these successive stages of development and her attitude to each of these main topics, perhaps discussing the hypothetical situation of Canadian membership at each stage? In this way a complete integration of the material might have been achieved, and the consideration of the problem of the last chapter, "Should Canada Join?," might have been facilitated.

Some minor weaknesses of the book are the lack of a good map of the Atlantic region, the absence of the texts of some of the more important documents and statements referred to, the omission of any mention of the Americas' interest in the Canadian North (in particular, the routes to Alaska), or of the solid achievements in the sphere of hemispheric defense on the Atlantic seaboard, and the lack of a list of the main conferences with dates and locations, to supplement the excellent list of technical conferences and of permanent inter-American organizations contained in the appendices. Inevitable in a book published in early 1942 is the non-inclusion of the most recent developments in the American system, including the Rio conference, which, with its change from neutrality to belligerency in American policies, removed a possible obstacle to Canadian adherence. The author has chosen the chronological approach to his vast subject, supplemented in the three concluding chapters with topical analyses of inter-American institutions, Pan America in the World Order, and Canada's rôle. There has inevitably resulted considerable repetition (we are told six or seven times that the Convention of 1928 was not ratified), and a great deal of cross-reference. The preceding criticisms notwithstanding, the book remains a commendable achievement in the realm of descriptive analysis, and should prove of value to the general public, to the student and teacher, and, particularly in its Canadian sections and references, to the non-Canadian scholar.

For lack of space, this review cannot discuss certain questionable statements which deserve noting. Had the Pan American system become in 1941 "the strongest contemporary force for international order" (p. 41)? Had inter-American solidarity made it possible for the Americans "to join effectively in taking measures designed to keep the war away from the Western Hemisphere" (p. 73)? Had the developing world crisis "nothing to do" with the adoption of the Good Neighbor policy by the U.S.A. (p. 114)? Was Canada "probably as loyal to the institution [the League] as any other member, and more loyal than most" (p. 258)? Does the author really believe that "a world organized on a basis of regional unions coördinated in a super-federal union" is feasible, in view of the evidence provided by his book, and that it would be the happy compromise between the urgent need for universality in a collective system and the American aversion to non-American commitments (pp. 233–234)?

H. GORDON SKILLING.

University of Wisconsin.

Law and Peace in International Relations. BY HANS KELSEN. (Cambridge, Mass.: Harvard University Press. 1942. Pp. xi, 181. $2.00.)

Both the distinguished author and the theme of this volume, containing the first of the lectures recently established in memory of the late Mr. Justice Holmes, suggest the cataclysm that today shakes the world. One of that large band of Continental scholars who have been exiled from their native lands, whether because of race or outstanding intelligence or both, by dictatorships that fear the light, and, seeking asylum under the Statue of Liberty, are significantly contributing to the development of science in this country, Hans Kelsen is the acknowledged leader of the most distinctive school of juristic thought that Europe has developed in recent years. And the theme is a problem accentuated by world-wide war, namely, whether the existing system of international law is or can be made a legal order promoting peace. This problem is considered in a twofold aspect: first, from the theoretical point of view, to ascertain whether international law is to be regarded as a legal order at all; second, on the plane of politics and reform, to determine whether and, if so, how the system can be improved in conformity with the peace ideal.

The first and theoretical inquiry concerning the nature of international law is, as should be anticipated, predicated upon the "pure theory of law," succinctly outlined in the initial chapter. Pursuant to the theory, law is the "specific social technique of a coercive order," an order distinguished by the employment of force to control human conduct and describable in terms, not of physical fact, but of hypothetical propositions or norms in which the delictual behavior and other conditions of specified sanctions are defined. In the light of this theory, the author examines the system of international law to determine whether it can be stated as a legal order prescribing coercive sanctions for the delicts of states and concludes that it is possible, though not necessary, to do so on the *justum bellum* doctrine characterizing war as in principle a delict that can be justified only as a sanction of international law. This premised, the analysis provides the basis for an instructive comparison of international with national law, indicating the indirect, collective, and absolute quality of international liabilities, the lack of differentiation in their sanctions, and the primitive decentralization of the international system.

The final two chapters turn from theoretical analysis to the possibility of reform. First, the solution of a federal union is considered and, for immediate purposes, discarded as a "dangerous illusion." The argument concludes with the thesis, supported by the history of legal evolution, that the next and most important step toward international peace is the establishment of an international court with compulsory jurisdiction. The proposal is predicated upon a powerful, summary critique of the League system, accompanied by refutation of the usual objections to compulsory adjudication or arbitration of international disputes and expressing the conviction that "the idea of law" remains the most potent ideology of power.

The conclusion compels consideration, even though certain reservations must be noted with respect to the argument. First, the theoretical analysis in the first four lectures, instructive as it is in many respects, is virtually disconnected from the practical problem discussed *in fine* and, in any case, must stand or fall with the theory of law from which it starts. At least to those who conceive of law as means to social ends (to which the author subscribes), the pure theory of law, in excluding from juristic science the vital factors of experience and ideal purpose, must for that very reason seem a poor theory, a belated effort to lend countenance to a species of formal positivism. As applied in this instance, it leads, moreover, to the questionable position of conceiving law in terms of the employment of force without regard to end or effect, a view which necessarily borders upon fascism. Furthermore, the analysis would seem to be vitiated by an ambiguity in the concept of "sanction," which, if the "pure theory" were carried to a conclusion, should denote the presumed privilege or duty of certain individuals to do defined acts and not the physical acts of enforcement. This ambiguity is involved in the vital analogy drawn between war in international law and the sanction of municipal law, from which the principal conclusions as to the inadequate primitive character of international law are derived, and which involve various misconceptions belied by the principles of state liability, e.g., that international law does not admit the theory of differentiated compensation for wrong. In other words, the difficulty in international law is that the compensation and the means of enforcement must as a rule be determined *ad hoc*, while the probability of coercion is uncertain, not that there is no possibility of adjusting punishment to fit the crime. It may be added that this ambiguity as to the nature of sanctions must be of central concern to the pure theory of law, since, if the sanction be defined as a hypothetical part of a hypothetical proposition, the ground for the supposedly basic distinction between physical and normative science dissolves, or at least the argument that legal norms remain valid, though violated. If these norms are purely theoretical, they cannot survive the occasional absence of their hypothetical sanctions. But these theoretical questions do not affect the author's judicious observations on the practical aspects of international law as a means to peace.

HESSEL E. YNTEMA.

University of Michigan Law School.

International Air Transport and National Policy. By OLIVER J. LISSITZYN. (New York: Council on Foreign Relations. 1942. Pp. xviii, 478. $5.00.)

All that anyone could possibly want to know about the policies of governments in regard to airlines is in this book. The volume is so packed with useful and carefully gathered information that it cannot be read through easily by ordinary mortals and should be employed mainly as a reference work. For that purpose it is invaluable. Mr. Lissitzyn's knowledge of the politics of air transportation is profound, and his scholarship is of the highest quality. As a research fellow for the Council on Foreign Relations, he studied problems of air transport for more than two years, and this impressive book is the result of those painstaking researches.

Despite the word "international" in the title, the book deals almost as much with the methods of promoting, regulating, and operating domestic airlines as it does with international issues. After pointing out in Part I the special characteristics of air transportation and the military, economic, and other interests of states in connection with the establishment of air routes, the author in Part II makes a comparative study of national policies and legislation. American experience with respect to air transport bulks heavily in the discussion, but the techniques used by every nation of any consequence are also thoroughly described. Problems of monopoly, state ownership, state subsidy, and state regulation are exhaustively explored, and some interesting contrasts and comparisons between air and other modes of transport are furnished. In concluding his examination of types of unilateral government regulation, the author states that these problems are interrelated "with those of governmental assistance to air transport, of national objectives, and of international diplomacy. A successful air transport policy must be capable of integrating all these elements as in a jigsaw puzzle and yet remain flexible," and he believes that the United States has made "important strides" toward the achievement of such a policy (p. 239).

In Part III, air transportation routes and systems in the Western Hemisphere are considered, while in Part IV attention is focussed exclusively on international matters. Here chapters on "The Diplomacy of Air Transport" and "The Freedom of the Air" should be particularly interesting to students of international affairs and post-war problems. It is refreshing to find an author so undogmatic in regard to his conclusions. As he remarks, "Air transport policies . . . contain elements of experimentation, and problems such as that of monopoly versus competition, in either American or international air transport, cannot be solved by the use of any hard and fast formula" (pp. 282–283).

PAYSON S. WILD.

Harvard University.

The Lost Peace. BY HAROLD BUTLER. (New York: Harcourt, Brace and Company. 1942. Pp. 246. $2.75.)

The former director of the International Labor Office at Geneva gives in this book one of the best surveys of the international situation to be found in print. He not only indicates the many and complicated reasons for the "lost peace"; he also points out the way, long and painful as it is, toward international order.

Mr. Butler has had unusual opportunities of travel and study. He has profited much from his position as an "insider" at Geneva as the political drama of our generation has unfolded. His intimate contacts with the men and forces responsible for the present *débâcle* enable him to speak with more accuracy and understanding than is common. The book is marked by unusual perspective and insight. Moreover, it has deep philosophic and literary qualities that one too infrequently encounters in studies which attempt to appraise so-called *Realpolitik.*

From his vantage point at Geneva, Mr. Butler saw at first hand the rise and fall of the League of Nations. Although the League gained in prestige and power between 1920 and 1930, it was born with a malady which it could not overcome. The disease was the isolationism of its members, which always appeared to weaken and vitiate its acts when a real test arose. Japan, Italy, and Germany—each in turn, then all together—found that the League, because of the chronic disunity of its members, offered no bar to their increasing aggressions. The failure of the peaceful nations—especially Great Britain, France, and the United States—to use the machinery of collective security which the League made available may be regarded as the immediate cause of the present war.

In many respects, France was the leading member of the League and the keystone of peace in Europe. Her decay, defeat, and enslavement thus became a tragedy for all free peoples. Mr. Butler shows clearly how the struggle between the conservatives and radicals of France weakened the whole structure of the state. The government became so paralyzed with inner dissensions that it could not make decisions, much less take action, against Hitler. Graft in public office and social demoralization undermined the patriotism on which the strength of the nation depended. Appeasement was only a step removed from treason. France was sold out by her greedy and corrupt leaders, who imagined that they could profit while their country lost its heritage of independence and honor.

In analyzing the influences in Germany which brought about the destruction of Europe's peace, Mr. Butler goes to the heart of the problem. He deals in detail with the German mentality and its obsession with things military. He explains the inability of the average German citizen to make political decisions for himself, with the result that he is lost unless he acts *en masse* and under the influence of a popular leader. Hitler is thus not an unnatural phenomenon in Germany. He is, on the contrary, what the people require and demand. So long as he satisfies their nationalistic egotism by giving Germany victories, they not only will endure him but will bow respectfully before him. The Nazi revolution is thus viewed as a logical step in the development of German nationalism. Only the utter destruction of German power, says Mr. Butler, can save the world from its peril.

Europe lost the peace because her good men were so devoted to its principles that they would not think of using force to defend it. Her evil men had no such scruples. The latter were aided in their schemes of revolution and conquest by the social and political cleavages that prevented the peoples of Europe from uniting for a common purpose and by economic conflicts that left them all but bankrupt by the time Hitler rose to power. Since the peaceful peoples would not accept the obligations of collective security, they fell victim to the technique of divide and conquer. The so-called "idealistic" internationalist (for example, Winston Churchill) was the true "realist," but this fact was revealed only after the appeasers and isolationists had betrayed their nations and themselves.

How is the lost peace to be regained? The process can begin only where the war leaves off. It must be slow if the foundations of order are to be solid. A cut-and-dried system of treaties should give way this time to a process of empirical adjustments. While the nation will doubtless continue as the basis of the new society, isolationism is dead. International machinery must be established to deal with the many problems common to all peoples. Great Britain and the United States, assisted perhaps by Russia, will be required to take the lead in the tremendous job of economic reconstruction. They will also be charged with the responsibility for maintaining order and insuring justice during the period of political transition which should eventuate in a more democratic and lasting peace. Mr. Butler fills in the details of this argument in a manner that elicits respect. For a sane and realistic approach to the entire question, the book can be recommended without reservation.

S. D. MYRES, JR.

Southern Methodist University.

Tornado Across Eastern Europe; The Path of Nazi Destruction from Poland to Greece. BY JOSEF HANČ. (New York: The Greystone Press. 1942. Pp. x, 337. $3.00.)

A great many books, pamphlets, and articles are now written concerning the past and the future of Central Europe. The literature in question is mostly suffused with sentimental or tactical considerations concerning the future, and almost every author has an axe to grind. The work of Josef Hanč, Czechoslovak consul-general in New York, is undeniably also strongly influenced by the tragedy and the hopes of his native country; yet it is one of the most serious, fair-minded, and conscientiously documented books on the subject.

The author includes the Danubian countries, the Balkans, and the Baltic states within his investigation. He describes the peace settlement of 1919, the quest for stabilization, the years of crisis, and the failure of the appeasement policy, both that of the Western Powers and that of the Russians. On the basis of this historical material, with due regard for the economic issues, the author describes the probable future of Central Europe. His main conclusion is of great significance, and is not sufficiently recognized by students of the problem: "A fatalistic view of German, Russian, or any other domination of Eastern Europe is one of the most unfortunate political assumptions. The Poles, Czechs, Slovaks, Serbs, Slovenes, Croats, and Bulgarians, altogether some sixty million people, are Slavs. The rest of the eastern Europeans, i.e., the Finns, the Baltic peoples, the Austrians, Magyars, Roumanians, Albanians, Turks, and Greeks, belong to other ethnic groups. Supposing that, having no other choice, the majority of Slavs should prefer Russian protection to that of Germany; inevitably the non-Slav groups would be drawn within the German or other power political orbits" (p. 302). The opposite solution, an Eastern Europe under German domination, would inevitably arouse a self-protecting Pan-Slavism against the Pan-Germanistic tendency.

Facing this dilemma, there appears no other answer to the problem than the unification of this territory in some form of federalism. Against a current of thought now influential, the author rightly emphasizes that economic problems cannot be solved without an adequate political structure; but such a political structure is again unimaginable without a "certain minimum of common political, cultural, and economic traits." This uniformity again cannot be created without deep social changes in many of the countries involved.

Upon all of these, and some other, problems, Mr. Hanč argues forcefully and convincingly. On only one of his suggestions is the reviewer unable to follow him. This is when he argues for the "regionalization of power" in Eastern Europe. Such a regionalization of power would be a very dangerous experiment without the establishment of a super-power system over Eastern Europe itself. Without the sovereignty of such a structure, under the guidance of the democratic powers, the mosaic of Eastern Europe, burdened by the hatred complexes of the past and the inexperience of its peoples in the democratic way of life, could never come into a state of peace and stabilization.

OSCAR JÁSZI.

Oberlin College.

The Disarmament Illusion. BY MERZ TATE. (New York: The Macmillan Company. 1942. Pp. xiv, 398. $4.00.)

It is impossible to say anything about the present work before commenting on the absurd and misleading title—a title assigned, apparently, by a publisher in the interest of commercial promotion. The author's own title for the book (p. ix) seems to have been *The Movement for a Limitation of Armaments to 1907*. The volume consists of an historical analysis and interpretation, and not, as might be inferred, a denunciation of a pacifist illusion. The nearest to such a position that the author comes is to hold that the problem of the reduction of armaments cannot be solved independently of a solution of political problems, particularly that of revision of the existing legal and political set-up. Such a view was not unknown in Homer's time, and the author does not seem ready to deny all possibility of progress in this direction, although she does state the situation at one point (p. 347) in curiously Berchtesgaden language.

Apart from this problem, our report upon this contribution from the Harvard and Radcliffe Bureau of International Research must be somewhat mixed. The study was written as a doctoral thesis and retains some of the qualities peculiar to that type of composition. There is also in evidence that curious mixture of sophomoric profundity ("The great movements in history . . . have their roots in bygone ages") with dependence upon others, regarded as "authorities," although much of the lavish citation of other writers seems traceable to an effort to picture currents of thought or opinion. Finally, the author has a tendency, while letting in the light upon one conventional pattern of thought, to adhere to another, viz., that large armaments inevitably produce war, even while—at one point (p. 358)—demonstrating in the very next sentence the dubious soundness of that cliché. Perhaps we should only say that the problem treated is both extremely complicated and extremely delicate, and that the author may not have thought over all of its aspects as thoroughly as might be done.

However, it must be recorded also that the volume provides fascinating material for a student of the problem of disarmament in its political aspects. On the whole, he will not find that the problem contains any elements not by now thoroughly familiar. If the problem has not been solved, this is traceable, not to lack of knowledge on the part of serious students, at least, of what needs to be done, but to the fact that such students possess no public authority, and to the generally backward state of intelligence and feeling in the public on such matters, which prevents such action being taken by those in positions of power in the state.

PITMAN B. POTTER.

Oberlin College.

Our Enemy Japan. By WILFRED FLEISHER. (Garden City: Doubleday, Doran and Company. 1942. Pp. xi, 236. $2.00.)

Japan's Continental Adventure. By CHING-CHUN WANG. (New York: The Macmillan Company. 1941. Pp. 224. $2.00.)

Wilfred Fleisher, author of *Our Enemy Japan,* possesses a rich background of knowledge and experience gained during a long and successful career as editor of *The Japan Advertiser,* which, prior to its recent sale to Japanese interests, was the only foreign-owned English-language newspaper in Tokyo. It is thus obvious that whatever Mr. Fleisher has to say about Japan is of interest.

The present small volume is a "war" book, characterized by certain limitations, but within these the author has succeeded in making a number of contributions of value. He gives a clear, though popular, treatment of the return to power during the past eleven years of the Japanese military. A chapter on "Japanese Leaders" contains brief but effective pen portraits of Prince Kanin, Prince Fushimi, General Sugiyama, Admiral Osami Nagano, Marquis Koichi Kido, Premier Hideki Tojo, General Shunroku Hata, and Admiral Yamamoto. These sketches will be welcomed by those seeking a closer view of personalities in the Japanese scene.

The discussion of "The Japanese Army" (Chap. 5) is particularly worth while. "The Japanese army is much more than an instrument of policy. It is the directive force in Japan, the arbiter of the nation's destiny, the mainspring in domestic as well as foreign affairs, the institution to which all administrative functions are subservient" (p. 90). Mr. Fleisher is frank in admitting that: "The sudden rise of the military power in Japan at the time of the Manchurian invasion in 1931 came completely by surprise to Japanese in other walks of life" (pp. 93–94). He holds also that: "From the very outset [1937] there was never any enthusiasm among the Japanese people for the war in China. . . . Every Japanese knew that Japan's objective in China was conquest" (pp. 101–102).

In Chapter 8, "The Washington Negotiations," Mr. Fleisher, who at the time was Washington correspondent at the State Department for the New York *Herald-Tribune,* presents a very suggestive account and interpretation of the American-Japanese diplomatic discussions preceding the outbreak of war. Of the chief Japanese negotiators, he says that Nomura was a "pawn who was used to further Japan's schemes without a knowledge of those schemes." The Kurusu mission was only a "stall for time until Japan's military plans were completed." Mr. Fleisher's treatment of these negotiations is a revealing supplement to the Roberts report on Pearl Harbor.

Japan's Continental Adventure is a reprint of articles and letters which first appeared in the American and British periodical press between February, 1932, and October, 1938. As the general title suggests, these articles deal with various aspects of Japan's China policy since the Manchurian "incident" of 1931. They present essentially a Kuomintang interpretation of China's foreign relations during the past decade. It is not surprising that essays covering so wide a field prove of uneven value. There are discussions of the invasion of Manchuria, 1931; Japan's rights and grievances; Shanghai and the League; the sale of the Chinese Eastern Railway; Japan's Pan-Asiatic doctrine; the Japanese "Open Door"; etc.

Dr. Wang is at his best in his treatment of the Chinese Eastern Railway, of which, during the critical years 1920–24, he was vice-president and director-general. Here he writes as a keen observer rather than as a political advocate. Concerning the checkered career of this railroad following the Sino-Russian agreements of 1924, he observes: "To manage a railroad by one government is difficult enough, but to manage a railroad by two nations with five directors appointed by each government, with the Chinese directors speaking little Russian, and the Soviet directors understanding no Chinese, is atrocious" (p. 81).

Paul H. Clyde.

Duke University.

Far Eastern War, 1937–1941. By Harold S. Quigley. (Boston: World Peace Foundation. 1942. Pp. xi, 369. $2.50.)

Appreciating the fact that no study of war, "written *inter arma,*" may claim to be definitive, Professor Quigley has undertaken "to examine the circumstances bearing upon the outbreak" of the Sino-Japanese conflict, "to provide a concise account of the hostilities, to describe political and economic repercussions in China, Japan, and Western states, and to analyze the policies and trace the diplomatic, economic, and strategic maneuvers of the major powers in relation to the war and to Japan's program for a 'New Order' in East Asia and Oceania." For a serious scholar, conscientiously seeking "to deal objectively with available materials," this is indeed a difficult task. But the present reviewer can think of no one better qualified for such a task than Professor Quigley, who here takes up a story which, in his revision of Professor Blakeslee's *The Far East: An International Survey,* he had already brought down to 1937.

The author is at his best in the four introductory chapters—"Progress and Poverty in China," "Militarism and Industrialism in Japan," "China's International Position," "Major Issues in Controversy"—and in the chapters on "The Renewal of War," "The 'New Order' in Occupied China," "The 'New National Structure' in Japan," and "Co-Prosperity in Greater Asia." Here and in his brief "Epilog" he sets forth conclusions from which there can be little dissent: the Japanese have consistently acted in pursuit of their own aims and not as tools of Nazi Germany; the dynamic force behind Japanese imperialism is "a race-consciousness entirely lacking in humor, an ideological foundation for integral nationalism beside which Teutonism looks anaemic"; a satisfactory settlement of the conflict "must leave China not only the appearance of independence, but its reality."

The chapter on "Japan and the Axis" and those dealing with the Far Eastern policies of the United States, Great Britain, and the Soviet Union contain a few statements and judgments with which this reviewer cannot agree. Is it true (p. 173) that Matsuoka signed his Neutrality Pact with the U.S.S.R. "under the eyes of Major General Eugen Ott"? Is it correct to say (p. 174) that "after June, 1941, the Pact was a millstone around Japan's over-extended neck," or (p. 175) that "Hitler's invasion of the Soviet Union . . . caught the Japanese unprepared"? It is equally arguable that the Japanese had shrewdly prepared for exactly what happened and that the Moscow Pact, by pledging them *not* to coöperate with Hitler against the Soviet Union, left them free for more profitable action toward the south. Was the American policy of allowing the continued shipment of petroleum and other war supplies to Japan, in order to postpone the inevitable Japanese-American clash, as wise as Professor Quigley (pp. 203–204 and elsewhere) appears to think? And is it accurate to characterize the Craigie-Arita agreement (p. 238) as "little more than a diplomatic formula, a clever evasion of specific commitments"?

These questions must not be taken as disparaging the real excellence of Professor Quigley's work. He has produced a valuable and timely book, and the inclusion of fifty pages of pertinent documents, as well as a carefully selected ten-page bibliography, will make it extremely useful to those in search of a reliable guide through the mazes of Far Eastern politics.

G. NYE STEIGER.

Simmons College.

The Dutch in the Far East. BY ALBERT HYMA. (Ann Arbor: George Wahr, Publishers. 1942. Pp. vi, 249. $1.75.)

The Structure of Netherlands Indian Economy. BY J. H. BOEKE. (New York: Institute of Pacific Relations. 1942. Pp. x, 201. $2.50.)

The Netherlands Indies and the United States. BY RUPERT EMERSON. (Boston: World Peace Foundation. 1942. Pp. 92. $0.50 cloth, $0.25 paper.)

The title of the book by Professor Hyma is wanting in accuracy. Over half of the body of the volume has very little to do with the Dutch in the Far East. A more truly descriptive title would have been "The Dutch and Far Eastern Trade," or simply "Dutch Commercial Expansion." In fact, the book consists of a collection of essays on Dutch trade expansion. The titles of the chapters are as follows: "The Secret of the Dutch Commercial Policy," "The Beginnings of Dutch Sea Power in the Far East," "The Voyage of Henry Hudson and the Founding of New Netherland," "The Anglo-Dutch Struggle for the Freedom of the Seas," "The Occupation of the Malay Archipelago," "The Conquest of Formosa and the European Trade with Japan," "Decline, Recovery, and Further Expansion," and "The United States and the Dutch East Indies."

The chapters vary considerably in quality. The chapter on "The Secret of the Dutch Commercial Policy" is excellent. In it Professor Hyma makes some telling points against the thesis of Max Weber on the relation of Calvinism and capitalism. Other chapters are good primarily as essays in bibliography. The last two fall much below the level of the others, the closing one seeming to be based wholly on tourist bureau and information office material.

Here and there the book reflects a patriotic enthusiasm one does not expect to find in scientific historical writing. Sometimes this is accompanied by odd lapses, as for example: "To understand how this little republic was able to monopolize all the European trade with Japan from 1642 to 1859 requires more than a discussion of physical geography and other obvious factors that have so often been analyzed before" (p. 53). Certainly the Japanese trade monopoly of these years had little to do with factors in Holland, and even more certainly it was not due to Dutch qualities of greatness. Nor was the volume of the trade ever very great.

The book also contains some amazing statements to proceed from a scholarly historian. The views expressed by a student in a dissertation are accepted as the views of the university, and the views expressed by a professor in a book review are stated to represent "the official opinion of the faculty in this university"! (p. 6). In a serious historical essay, the author finds occasion to dispute the accuracy of a certain story which recently appeared in the daily press (p. 174). And what is one to make of a statement like the following: "Since Great Britain is a much greater European power than is The Netherlands, it seemed fitting for the British to control more than one-half of the combined rubber production, just as in recent years the British government has insisted that in the Royal-Dutch Shell Co. more than half of the stock shall be British-owned rather than Dutch"! (pp. 189–190).

Despite these peculiar lapses which detract from the quality of the work, the earlier essays contain much interesting material and some excellent analysis.

For many years Professor Boeke has been a leading student of Netherlands Indies economy. He knows the Indies from long residence and service. Before becoming professor of tropical colonial economy at Leiden

University, he was advisor to the Peoples Credit System and professor of economy at the Indies Law School. For many years he has developed the theory of dual tropical Eastern economy. "Oriental economics," so Boeke states his thesis in the present work, "is essentially different from Western; and hence Western economic doctrines are not, or are only partly, applicable in the Orient: markets, price formation, the theories of demand and supply, of enterprise, of trade cycles, and so forth—in short, all the important problems of Western economic theory—do not present themselves, or at most do so only partially and slightly to Eastern society." The book here reviewed presents a description and analysis of the structure of Indies economy from this point of view.

Boeke does not deny that the two economies interact upon each other, though at times he seems to maintain that in spite of their juxtaposition the two operate in isolated spheres. The two interact upon each other, but they nevertheless remain distinct and wholly different. The thesis is pushed rather far and often in much too absolutistic a fashion. Nor is the author always consistent. There are passages which seem to contradict his main thesis. Economic life in the East Indies during the past decade and a half had become much more integrated than Boeke describes it. However that may be, Boeke's point of view enables him to make a penetrating and fruitful analysis of East Indies economy.

The book concludes with three chapters on the population problem and the "drain" theory. All students of colonialism will be much interested in these chapters. After examining the proposed solutions to the population problem of Java, he concludes that "a real solution can be found only by instilling into the masses of the people a Western spirit which will bring forth a rationalistic view of sex relations and a dynamic view of production." He makes some incisive criticisms of the drain theory, especially as applied to the East Indies. The book is one of the best written on the Indies in a long time.

While Professor Emerson, in his study, is interested primarily in the future of the East Indies, he first lays the basis for an intelligent discussion of the problem by giving an excellent summary of the history of Dutch colonial policy and administration and the economic development of the dependency. He examines the stake of the United States in the Indies and concludes that Holland, Japan, and China "appear to be concerned more directly and vitally" than this country. The primary and direct interest of the United States in the Indies "does not extend beyond the maintenance of a situation in which they are neither controlled nor seriously menaced by a hostile power"; but the United States also has a general interest of seeing the Indies knit into the fabric of world peace and making the largest possible contribution to world prosperity. Emerson holds that "the one type of solution which would satisfy all the basic requirements in connection with the Indies would be one arrived at through international coöperation and operating under international guaranties"—in short, a renewal and extension of something like the mandates system.

That the Western Powers will not be able to resume in Southeastern Asia where they left off after the Japanese invasion is clear, but it is not easy to determine what should be done. Certainly the future status of the Indies cannot be discussed apart from the future status of similar areas throughout the world. Secondly, constitutional developments within the Dutch empire have been extremely rapid during the past few years. The Indies had acquired a large measure of autonomy; an imperial conference has been called to convene immediately after the war to draft an imperial constitution; Van Mook, born and reared in the Indies and known for his vigorous Indo-centric views, is now minister of colonies; as a sort of substitute for the parliament, there has been created an advisory council containing representatives from each of the three parts of the empire; and a Javanese has been made a member of the cabinet. The Dutch government in London is now more of an imperial than a national government. If these trends are accepted by all parts of the empire, how will the demand for external control be justified?

It is extremely difficult to plan for post-war construction, for the world may be vastly different when the war is over. Whatever the difficulties, however, studies like this by Emerson must be made. He has set a high standard for others to follow.

AMRY VANDENBOSCH.

University of Kentucky.

Treaties and Constitutional Law: Property Interferences and Due Process of Law. BY WILLARD BUNCE COWLES. (Washington, D. C.: American Council on Public Affairs. 1941. Pp. xv, 315. $4.50 cloth, $3.50 paper.)

It is not unreasonable to expect that when this war is over, the treaty-making power will assume renewed importance. If so, judge, lawyer, and student alike will find this volume by Dr. Cowles a valuable aid in interpreting the effect of treaties upon domestic law. The work is characterized not only by an unusual clarity of expression and excellent factual presentation of cases, but by a purposiveness which is delightful. From start to finish there is an orderliness in the method of attack which reminds one of a first-rate mystery story. Dr. Cowles has problems to solve; he discovers his clues; and from there on the hunt is relentless.

The book seeks to answer two basic questions: "first, whether or not the due process and just compensation clauses of the Fifth Amendment . . . constitute limitations upon the provisions of the international treaties of the United States, in their character as domestic law in the United

States; and second, if they are and if a court should hold such a treaty provision binding upon it, notwithstanding the constitutional consistency, would there be a duty on the part of the United States to assure the property-owner just compensation, which he could enforce against the United States as a claim founded upon the Constitution?" (p. 15.) The answers reached by Dr. Cowles are both in the affirmative. The due process clause is a limitation on the treaty-making power, and the United States does have a duty to assure property-owners just compensation when treaties in conflict with constitutional guarantees interfere with property rights.

The key to the analysis of the problems under consideration lies in what Dr. Cowles calls the "scope-depth distinction." If the object of legislation be within the constitutional "scope" of congressional authority, the question still remains of the "extent" or "depth" to which Congress may regulate that object. Due process is a "depth" limitation. Thus, while the "scope" of the treaty-making power is broader than the interstate commerce power, as is illustrated in Missouri v. Holland, it does not follow that the "depth" limitations are not substantially the same.

This reviewer feels that Dr. Cowles' analysis has greater validity in logic than in experience. While an imposing array of citations may be given to substantiate the position that treaties violating "depth" limitations will be held void (p. 294), the fact would seem to be that none has been so held unless treaty provisions restricted in their application by the rule of dual construction be counted. Furthermore, the recently decided case of United States v. Pink (February 2, 1942) apparently indicates that the majority of the justices of the Supreme Court have not yet reached a point where they will wholeheartedly accept the conclusions reached by Dr. Cowles.

WILLIAM O. FARBER.

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Introduction to Social Science. BY GEORGE C. ATTEBERRY, JOHN L. AUBLE, ELGIN F. HUNT, AND OTHERS. (New York: The Macmillan Company. 1941–2. Vol. I, pp. xx, 668; Vol. II, pp. xx, 800. $7.00.)

The need to acquaint youth with the world in which they find themselves has been the stimulus for several recent "integrated" social science texts. (See this REVIEW, Dec., 1940, p. 1246, and Oct., 1941, p. 1022.) The two volumes here reviewed, the work of fifteen teachers of the survey course required of all freshmen in the three Chicago city junior colleges, merit consideration by all teachers in each social science who are not satisfied with their students' understanding of and concern with the subject-matter of their courses. The undergraduates' indifference may be due, not to natural perversity, but to the lack of knowledge of related factors, outside the discipline being studied—a knowledge which instructors too often assume is effortlessly absorbed from their environment by all normally intelligent persons.

Nor is this indifference cured by requiring every student to take the introductory course in each social science. That is impracticable for the present accelerated programs. It is also pedagogically unsound. Average students are not likely to retain the bits of knowledge from each course and at an appropriate later time fit them together so as to make significant and meaningful the social situations in which they find themselves. Much more reasonable, when the students' interests are considered, is the "problem approach" which the authors of this survey utilize. This approach frees them from the obligation to include irrelevant materials customarily treated in an introductory course for any one discipline. They use only materials pertinent to problems selected for their "closeness to the life of our time and presumably to the actual experiences and situations confronting the student." Quite consistently, the authors hold to their objectives: "to introduce the student to the problems of contemporary society; to find what groups are most affected by these problems; to show by relevant historical data how these problems came to be and what has already been done about them; and to demonstrate in what way economics, sociology, and political science contribute to an understanding and the possible solution of these problems."

While the main divisions (Social Relations and Social Problems, The Competitive System and Social Problems, Government and Social Problems) are laid out in the belief that "the separate departmental disciplines . . . have a logical unity of their own," and hence that "nothing is to be gained by an artificial attempt to disguise this fact," the reviewer is impressed with the extent to which the solution of problems in each division depends on governmental action. These problems are usually mentioned in texts on American government, but they tend to be obscured in the systematic description of each agency's form and functions, what its relations with other agencies are, and how far its authority extends. Reluctantly the reviewer concedes that government may become much more significant to the individual citizen who is not a political scientist and has no intention of becoming one when its function is directly related to a problem which concerns him. Government's essential rôle is more clearly comprehended because relevant data from other social sciences are included. How else can the study of politics be the master science which Aristotle conceived it to be? Even the problems classed as governmental require for their understanding a perception of historical development and of socio-economic factors.

Introduction to Social Science incorporates an instructional aid which should be more generally used. At the end of each chapter is a selected list of its "terms to be understood," as well as the more usual "questions for discussion" and a carefully chosen bibliography. Tables and figures are abundantly provided.

In a text covering so many fields, there are inevitably some minor defects. Some are attributable to "too many cooks." Materials are not always adequately synthesized. The result may be merely a repetition, without reference to previous use, as when similar data on urban housing appear in Chapters 5 and 8 (pp. 146–7, 234–6). In other instances there is not enough similarity. The 1940 census figures are variously interpreted as to a back-to-the-farm movement (I, pp. 50, 117, and II, 83). "Nearly a million youths" (I, p. 208) become "nearly 900,000 young people" only seventeen pages farther on. Are there more early marriages in recent decades than there were fifty or more years ago, or not? (I, pp. 43, 91, 244) Can it be true that "only one family in five" owns a motor car while there is "a car for every four persons"? (I, pp. 318, 576). Occasionally an author condenses rather than selects, leaving a skeleton of dry facts, as in the chapter on Political Parties. The significant content of that chapter might have been put in the next chapter on Pressure Groups and Invisible Governments without unduly extending the latter.

Other defects arise from a too literal "closeness to the life of our time." The closeness is so transitory that many of the details are out of date before the text reaches the student. Problems of protecting the consumer are left with the late OPACS and NDAC. The latter, instead of OEM, is credited with the weekly bulletin *Defense* (II, p. 135), whose title had been changed to *Victory* before the volume was published. Problems of unemployment are discussed with little to suggest that they would soon become insignificant, at least "for the duration." Why not leave much of this kind of data to the weekly news magazine instead of burdening the user of the text with a responsibility for keeping its details up to date?

Despite these minor defects, the authors have produced an excellent text. They have demonstrated that coöperative effort can be fruitful. They have successfully breached the walls between the separate disciplines, thereby enabling young citizens more readily to understand and more confidently to attack the major social problems of their time.

HOWARD WHITE.

Miami University.

Social Research; A Study in Methods of Gathering Data. BY GEORGE A. LUNDBERG. New York: Longmans, Green, and Company. 1942. Pp. xx, 426. $3.25.)

Political scientists who have been impelled to teach courses in methods of study have long been familiar with Professor Lundberg's earlier (1929) edition of *Social Research.* They have probably tried using it in classes and have undoubtedly found it valuable in training young men and women how to assemble political data. They have also, beyond question, lamented the fact that there does not exist a single good text in methods of political science. One can say this with due respect to Swenson and Spahr, who wrote a good general work on the techniques of studying and preparing materials, and Lasswell, Gosnell, Rice, Neprach, and other fellow-politicos who have offered interesting suggestions in limited fields. Since Lundberg published his first edition, he has issued a *Foundation of Sociology* (1939) wherein he pled for a systematic, quantitative approach to societal phenomena. Needless to say, Lundberg's more highly developed sociological theory has greatly influenced the second edition of *Social Research.* It has also established a cult, of which Dodd is the most energetic practitioner; and it has produced the inevitable reaction among the sociologists, who differ sharply in their attitudes toward Lundberg's theories of social inquiry. Roughly, there are three classes of sociologists: those who prefer Lundberg's insistence on rigidly formulated quantitative procedures; those who favor excogitation about essences, motives, and ethical control; and those who are too tired to bother and who limit themselves to dull and uninformative descriptions of easily recognized social institutions, such as marriage, the city, and war.

It would not serve our purpose to enter the lists and do battle with any of these adversaries, or even to don the expert's uniform and report the progress of the controversy, *à la* Harry Elmer Barnes. Suffice it to say, Lundberg's first four chapters are suggestive and reasonably sound. Some critics seem to find them burdened with words and phrases of doubtful validity and a specious clarity; but I did not find them too "difficult" for the beginning student. Notwithstanding the persistent antagonism to more careful sampling, clearer definitions, and more vigorous prosecution of scientific inquiries, the trend toward a real science of society is quite apparent—and Lundberg deserves credit for his indefatigable advocacy of quantitative studies.

The chief value of this book for political scientists lies in the chapters dealing with the technique of identification, aggregation, and interpretation (the schedule, questionnaire, attitude polls, sociometric scales, and sociographic methods).

For teaching purposes, these chapters are very good. The political science teacher could assign readings on the construction of questionnaires, interview forms, scoring cards, and personality rating scales—and then require his students to draw up a questionnaire for the determination of attitudes on current issues; prepare a systematic interview of one class of civil servants with the aim of discovering areas of tension; organize an appraisal system for measuring administrative performance; and organize a systematic survey of personnel within a given municipal department.

Although these later chapters are quite useful, they lack the qualities of simplicity, logical order, and material exclusiveness essential to the job of effectively imparting to students precise skills in gathering data, classifying them, interpreting them. And, as I said earlier, no treatise on methods of "social research" is satisfactory for use with students of political science. The sociologists have been so busy bowing down at the shrine of Sorokin and complimenting themselves on their priority as high priests of social research that they have not observed the demand for more precise study of personalities, institutions, and situations which intrigue the political scientist.

For example, Chapters IX, X, and XI include too many illustrations taken from fields which only remotely interest the political scientist; and there is inadequate discussion of opinion polls, marginal voting, municipal administration appraisal forms, personnel rating, and regional surveys. As a matter of fact, this book seems to be best suited for the use of potential directors of research projects; and if such persons do not have the imagination to profit by Lundberg's suggestions, they would better transfer their activities to some other field.

ROY V. PEEL.

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BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

Walter F. Dodd's *Cases and Materials on Constitutional Law; Shorter Selection* (3rd edition, American Casebook Series, West Publishing Co., pp. xxviii, 894, $6.50) resembles in form and topical arrangement his second edition (shorter selection) of 1937. The contents of the volume have been thoroughly revised to include briefs of some two dozen important cases decided during the five-year period ending January 1, 1942. The author has added several new comments on subjects such as the doctrine of reasonable doubt, facts in constitutional cases, principles of constitutional construction, and administrative determinations of fact. A few sections of the second edition have been combined into one in this new edition. The chief shifts in case offerings are evident in the chapters on due process and equal protection, foreign and interstate commerce, and judicial interpretation and enforcement of written constitutions. Several old cases which did not appear in the second edition have been given recognition in the present volume. For example, a selection from the opinion in The Genesee Chief v. Fitzhugh, 12 Howard 443, makes a point on *stare decisis* in jurisdictional questions. Excerpts from the opinions in Western Metal Supply Co. v. Pillsbury, 172 Cal. 407, and Crowell v. Benson, 285 U. S. 22, have been used to clarify certain constitutional aspects of the powers of administrative agencies. Annotations have been revised adequately. Although political and civil rights perhaps receive too little emphasis, nevertheless reasonably well-balanced case selections place this volume in a class with the best of reference books suitable for use in undergraduate courses on American constitutional government.—ALDEN L. POWELL.

The seventeenth volume of American diplomatic correspondence prior to 1860, under the editorship of William R. Manning, Department of State, is *Diplomatic Correspondence of the United States: Canadian Relations, 1784–1860*, Vol. II (Washington, Carnegie Endowment for International Peace, pp. xxxviii, 1016, $5.00), the second volume in the series on Canadian relations, covering the period 1821 to 1835. Two further volumes will complete the Canadian series, thus supplementing the three volumes on Latin-American independence and the twelve volumes on Inter-American affairs. In this second volume are one thousand pages of documents, a detailed subject index, a numerical list of the documents, copious cross-references, lengthy explanatory footnotes, and several maps. Much of the correspondence deals naturally with Canadian-American boundary questions, North Atlantic fisheries, and St. Lawrence navigation. Documents relating to West Indian affairs are also included. In the light of recent developments in inter-American and Canadian-American relations, it is interesting to note in documents number 854, 855, 856, 870, and 879, all of them sent by Richard Rush, United States minister to Great Britain, to John Quincy Adams, United States secretary of state, in 1823 and 1824, that the United States sought to apply the Monroe Doctrine to prevent further British colonization on the Pacific Coast south of the fifty-first degree of north latitude and north of the fifty-fifth degree—a policy which the British government firmly resisted, declaring that the unoccupied parts of America were "open as heretofore to colonization by Great Britain" and "that the United States would have no right whatever to take umbrage at the establishment of new colonies from Europe in any such parts of the American Continent" (p. 420).—H. GORDON SKILLING.

J. Maynard Keech, instructor in economics at Duke University, has made a careful study of *Workmen's Compensation in North Carolina, 1929–1940* (Duke University Press, pp. 198, $3.00). The appendix contains a useful summary of the essential provisions of the North Carolina legislation, in layman's language. The text includes a brief history of the original statute, with its subsequent amendments and judicial interpretations. Scant account is given of the "intangible factors" which delayed the passage of the act until North Carolina was the forty-fourth state in the nation to leave the common law. Have these "subjective forces" been so dissipated since 1929 that they do not enter into the problem of administration? The appendix presents an extensive bibliography, but it would appear that evaluation is based mainly on data obtained in the files of the Commission or from interviews and correspondence with state officials. Although the analysis of administration depends on observation as well as bibliography, the point of view seems to remain that of the administrator, with little emphasis on the human incidence of the act. Since the approach is "objective measurement," considerable use is made of statistical and tabular material. The summary is mildly laudatory; the chief criticism, the lack of funds; the principle recommendation, to make the Commission self-financing, independent of legislative appropriations. No attempt is made to compare the North Carolina act with legislation in other states. If, however, a similar monograph were available for each state, one would have an excellent basis for a comparative study of workmen's compensation, with a possibility of standardization.—MARIAN D. IRISH.

Organized Anti-Semitism in America; The Rise of Group Prejudice During the Decade of 1929–1940 (American Council on Public Affairs, pp. 191), by Donald S. Strong, is a study of 121 anti-Jewish groups in the United States. Particular attention is devoted to the German-American Bund, the Silver Shirts, the National Union for Social Justice and the Christian Front, the Defenders of the Christian Faith, the Edmondson Economic Service, the American Vigilant Intelligence Federation, the Industrial Defense Association, the Paul Reveres, the James True Associates, the American Christian Defenders, and the Order of '76. Other groups are treated more briefly. The study is based chiefly upon the publications of the societies and the hearings of the Dies Committee. The author sees a common background in all countries for anti-semitism: an anti-revolutionary sentiment, a prolonged depression, and an upsurge of national fervor. This intense nationalism is directed against the alien—and the Jew is always an alien. Furthermore, the Jew ideologically typifies communism, and hence becomes the target or scapegoat for the anti-revolutionary groups. The author identifies fascism with anti-semitism, but declares that there is not the leadership for a united front in the United States. He concludes that there will be no formidable persecution of Jews in this country, largely because they comprise only 3.69 per cent of our population. Dr. Strong gives a qualitative analysis of the antisemitic organizations and their propaganda techniques, but he has not attempted an exact quantitative appraisal of the effect on public opinion. The book lacks an index.—MARY EARHART DILLON.

The *Bibliography of the Official Publications of Louisiana, 1803–1934* (No. 19 American Imprints Inventory, Louisiana Historical Records Survey, Service Division, Work Projects Administration, Hill Memorial Library, Louisiana State University, pp. xiv, 579, mimeo.), compiled by Lucy B. Foote, is a valuable aid to the study of state and local history and government. The greater portion of the bibliography was first compiled as a thesis in the University of Illinois Library School, but was later expanded to cover the territorial period. The territorial publications, 1803–1812, precede the list of state documents. A brief statement outlining the establishment and functions of each territorial governmental unit accompanies the list of its publications. Analytical title lists of acts, House and Senate journals, bulletins and circular series, and other numbered or chronological series are given in full. The bibliography of Louisiana state documents is arranged alphabetically by the official title of each agency in corporate entry form. A brief historical sketch of the department or office precedes the entry of the required report. Other serial entries follow the report. Bulletins and circular series are listed in numerical order by title, but irregular series of publications are listed in chronological order. Use of the bibliography is greatly facilitated by an index of personal names, subjects, and key words. As an additional aid to the research scholar, library holdings for the documents are listed. Miss Foote is to be commended for the excellence of her compilation. It might well serve as a model for similar bibliographies.—EVERETT S. BROWN.

In *American Parties and Elections*, 3rd edition (D. Appleton-Century, pp. 790, $4.00), Edward McChesney Sait presents a second revision of his well-known textbook within a period of three years. The presidential election of 1940, the passage of the Hatch Acts, and other party legislation offer justification for a revision which has no significant new interpretations of party life. Congratulations are due Professor Sait for keeping his book in the same number of pages. Students of political parties will continue to admire the systematic, comprehensive, and clear presentation of much unwieldy material. Many teachers will continue to use the volume in their classes. Liberal scholars may be puzzled by Professor Sait's objectivity in contemporary politics. Numerous quotations from columnists like Kent, Lippmann, and Johnson seem to give an anti-New Deal slant to recent party history. A sample sentence reflects the overtones of discussion of current politics. "While many (self-styled) liberals in the United States denounce foreign dictatorship, they pursue at home the very tactics that may wreck consensus. They are busily engaged in sapping and mining—in sowing the seeds of class conflict" (p.7). One wonders why the Republican loss in 1934 was "a sinister phenomenon"

(p. 278), and why the Farm Bloc "recalled the sinister course of insurgency" (p. 268). Coincidentally, W.P.A. "scandals" receive extended comment, while Teapot Dome is overlooked. Some skeptics may doubt that Taft was "one of the most constructive Presidents in our history" (p. 389).—J. B. SHANNON.

The first full-length work on the life of the present Secretary of State has recently been written by Harold B. Hinton and is published under the title *Cordell Hull; A Biography* (Doubleday, Doran and Co., pp. xi, 377, $3.00.). The book is created from the point of view of a Washington correspondent and is filled with such intimate bits of information as are gained in the journalist's routine. Personal episodes are drawn together in an organized story, with the addition of other interesting materials. More space is devoted to the attitudes of Mr. Hull and the people with whom he has dealt than to the substance of the national policies which the Secretary has helped to shape. The foreword is an encomium by Sumner Welles, and it rings with convincing sincerity. The discussion of President Roosevelt's poorly advised note to the London Monetary and Economic Conference of 1933 is a valuable section of the book. Of even more interest is the account of Mr. Hull's negotiations and heart-to-heart talks with the delegates at the Seventh International Conference of American States in Montevideo during the same year. The Secretary's work at that conference, it may well be contended, constitutes one of the most brilliant accomplishments in American diplomacy; and Mr. Hinton, who was present, had an excellent opportunity for close-up observation. The author's easy reportorial presentation is not always cramped by zeal for fastidious exactitude. The chapter headings "Father of the Income Tax" and "The New Prime Minister," and the description of the *I'm Alone* case, in which the coast-guard cutter chases its prey "halfway across the Atlantic," might, for example, cause the meticulous academician to arch his eyebrows. On the whole, however, Mr. Hinton has done an excellent and interesting job in writing the first of the biographies regarding a statesman who has left his mark upon our foreign policy, and who is sometimes described as the most courteous gentleman in Washington.—BENJAMIN H. WILLIAMS.

Country people are rich in children, but poor in wealth and income. Having established the disturbing facts that farmers have more children and less income than city people, and that the poorest agricultural areas are likely to have the largest proportion of children, George A. Works and Simon O. Lesser, working under the auspices of the General Education Board, proceed to analyze the perplexing problem in *Rural America Today—Its Schools and Community Life* (University of Chicago Press, pp. xx, 450, $3.75). The authors are professional educators who, convinced that the school is the natural nucleus of community life, hope to adapt education for children, youth, and adults to the needs of rural society. Their opinions are well supported by specific evidence. Thorough reform will require the enlargement of school districts to obtain better equipment at lower per capita cost, provision for federal and state financial aid, the adjustment of the course of study to suit the needs of country children with emphasis upon vocational training and guidance, the "vitalization" of instruction by substituting interesting projects for dull textbook assignments, the inculcation of social responsibility in respect to public health, welfare, recreation, and conservation, the stimulation of neighborhood pride by arousing the enthusiasm of the school children, and the recruitment of thousands of inspired teachers who can assume leadership of the community. Such a miracle has actually been accomplished in a few places. If our democratic ideal is to survive, rural education must be improved. The problem of rural welfare is nation-wide, but the solution lies in local planning and community initiative.—JOHN E. BRIGGS.

As the new academic year opens, college teachers of American government have available three texts, among others, which have been published during the last spring or summer. They are: William Anderson's *American Government* (Henry Holt and Co., rev. ed. pp. xi, 922, $4.00), Harold Zink's *Government and Politics in the United States* (Macmillan Co., pp. xiii, 1091, $4.00), and Frederic A. Ogg and P. Orman Ray's *Introduction to American Government* (Appleton-Century Co., 7th ed., pp. ix, 1021, $4.00). These authors are well known for their competent and accurate scholarship. The emphasis in this review, therefore, may be directed to an appraisal of the teachability of these texts. With the assistance of the teacher and the expenditure of the appropriate amount of intellectual energy by the student, will they aid him to think intelligently about political problems and, as a responsible citizen, to contribute to their understanding and solution? Professor Zink, whose text has made its first appearance, attempts to answer this query by familiarizing the student with the "human element" in government. Accordingly, one will find, besides an adequate discussion of the formal aspects of the American political system, considerable emphasis upon the rôle of political parties, pressure groups and pressure politics, and public opinion. As might be expected, Mr. Zink has written penetrating discussions of the political boss, political machines, pressure groups, and public opinion. By a clear and easy style, coupled with a generous resort to apt and vivid illustrations, the writer contributes worthily to disabusing students of the notion which they hold quite generally that American government is a "dry" subject. In the second edition of his book, Professor Anderson announces in the preface that the experiment which he performed four years previously in the first edition, of giving the functional approach "a more thorough trial," has proved its value as a teaching technique. The reviewer concurs in this conclusion. Professors Ogg and Ray, who brought out the first edition of their textbook twenty years ago, continue in the seventh edition to believe that, despite "increasing interrelationships," each of the levels of government "is still largely self-contained." The authors express the hope that "the fuller treatment of numerous matters of ever-growing importance" in their book will encourage the student to further inquiry. To assist him in this quest, "nearly one-fifth of the total space is devoted to apparatus in the form of footnotes and chapter bibliographies, rather than text" in order "to provide these aids generously for those who can find time to make use of them."—GEDDES W. RUTHERFORD.

In writing *The Presidential Campaign and Election of 1892* (Stanford University Press, pp. 268, $2.75), George Harmon Knoles obviously did a prodigious amount of research into biographies, memoirs, and correspondence of political leaders and into newspapers and journals of fifty years ago. The result might easily have been a dull, dry compendium of factual information; but it is not. The facts are present in abundance, but they are presented in a literary form that makes them almost fascinating reading. This is especially true of the narrative of the political background and play of political forces in both major parties and the Populist party in the period preceding the national conventions. In scope, the work covers the negotiations in each party prior to the conventions, the sessions of the conventions, the campaign, and an "analysis of results and general conclusions." This last chapter is less satisfying than the ten narrative ones that precede it. The contest of 1892, says the author, "represented an imperfect alignment of political forces" that was "revealed with great clarity" in the campaign of 1896. Mr. Knoles can, then, do another and greater service by continuing his study, along the present lines, into the more important and more exciting Bryan campaign of 1896.—HAROLD R. BRUCE.

Municipal services cost money, but do not necessitate waste and inefficiency in its spending. The more emphasis upon sound business practices in municipal fiscal administration, the greater the amount of governmental services obtainable for the taxpayer's dollar. This is the justification offered for Lloyd Morey and Orval W. Diehl's *Municipal Accounting* (John Wiley and Sons, Inc., pp. xiv, 415, $4.50), labeled as successor to Mr. Morey's 1927 *Manual of Municipal Accounting.* The book sets forth the underlying principles for municipal accounts and standard terminology for use therein, as developed by the National Committee on Municipal Accounting. Based upon these, it supplies a detailed procedure for the development of a complete system of municipal accounts. The study is, of course, too technical for general reading, being intended as a reference work for municipal officials and students of finance, and as a guide-book for accountants, bookkeepers, and others concerned in the actual installation and operation of municipal accounting systems. Eighty-one accounting forms and thirty-three sample statements are included. Continuously the study emphasizes that municipal accounting is not merely a matter of financial history, but primarily a matter of making available full information in the form needed for the guidance of officials charged with direction of the city's affairs.—CHRISTIAN L. LARSEN.

In *The Administration of Municipal Legal Services: The Chicago Law Department* (Public Administration Service, pp. vi, 58, $1.50), Robert W. Siebenschuh analyzes and describes the work of the law department of the nation's second city. He describes the decentralized state of the city's legal services prior to reorganization in 1935, the present organization and the results of reorganization, the department's administrative management, the handling of personnel problems peculiar to such a department, and the research work which constitutes a new and valuable phase of its work. By describing the procedure in a hypothetical civil case, the author clearly and effectively shows how the head of the department, through a sequence of carefully planned departmental forms, is able to follow the flow of work in cases from their being taken up by the department to their completion, and is thereby enabled to note maladjustments in organization and practices, and considerably to supervise the department. —H. C. COOK.

With Allied statesmen appealing for the support of colonial peoples, Puerto Rico's bargaining position has improved. To the island's resident commissioner, Bolívar Pagan, the time has seemed propitious for publishing *Puerto Rico, the Next State* (Washington, D. C., printed privately, pp. 108). A judicious selection from the writings of American political leaders seems to demonstrate that our best traditions point to statehood for Puerto Rico. Statistical and descriptive material is arranged to minimize political, economic, and cultural barriers to the island's complete assimilation into the Union. Pagan's own Coalition party is treated more sympathetically than Luis Muñoz Marin's secessionist Popular party, whose control over the legislature is explained as accidental. The author thus glosses over sentiment favoring independence rather than statehood. —WILLIAM T. R. FOX.

FOREIGN GOVERNMENT AND POLITICS

Confidence in the vitality of the democratic tradition clearly vied with the zeal of the scholar in prompting Professor William E. Rappard to produce his *l'Avènement de la Démocratie moderne à Genève* (Geneva: Alex. Jullien, pp. 445), at this particular time in his nation's and Europe's history. Prefaced by a description of the oligarchical political institutions which Joseph Des Arts and his fellow reactionaries imposed upon Geneva on the morrow of the restoration in 1814, the first half of the monograph traces the gradual liberalization of these institutions between 1820 and 1840 as a result of the pressure of an enlightened parliamentary opposition. Subsequent chapters carry the reader through the turbulent seven-year period after 1840, when a popular party, led by James Fazy, not averse to the use of the barricades to secure their aims, forced the adoption of two major revisions in the canton's basic statute and thereby ushered in the modern radical democratic régime. For his materials, the author relies largely upon the debates of the canton's legislative and constitutional assemblies and the correspondence of leading public figures. These sources, however, reflect with reasonable fidelity and completeness the more crucial issues, diplomatic, economic, and political, which dominated cantonal opinion in the various periods under review. Although limited to the constitutional history of a single small canton, and consequently somewhat parochial in content, the study is not without value to the student of comparative politics. It provides an excellent reminder of the oft-neglected truth that the more successful democratic institutions of contemporary states have developed from vigorous local roots and were not imposed by national constituent assemblies. Moreover, the fact that Geneva, comparatively isolated from the diplomatic and military quarrels of the Continent by the neutrality of the Confederation to which it belongs, should have developed democratic institutions with such amazing rapidity supplies perhaps a more convincing demonstration of the contemporary appeal of such institutions than the history of those larger communities in which the logical course of constitutional development may have been deflected or corrupted by the exigencies of power politics. At any rate, Professor Rappard appears to rely, in part at least, upon the history of his own canton for the following significant generalizations which appear on the concluding pages of his excellent study: "l'histoire du monde occidental, depuis un siècle et demi, paraît montrer que la plupart des hommes, lorsque la paix extérieure et la tranquillité intérieure leur en laissent le libre choix, préfèrent la qualité de citoyen à la condition de sujet. Impatients de toute contrainte, ils en sont tout naturellement venus, par la liberté politique, à la démocratie."—ARNOLD J. ZURCHER.

Of the half-dozen worth-while books on Swedish social affairs which have appeared in this country during the past two years, *The Government* *of Labor Relations in Sweden* (Chapel Hill: The American-Scandinavian Foundation and the University of North Carolina Press, pp. xii, 367, $3.50), by James J. Robbins, is easily the most important to political scientists. It is a solid work, the result of mature research on the ground, and gives the reader an excellent account of the general labor problem in Sweden as well as the law of labor relations. While there is an adequate treatment of the Swedish collective contract system and a substantial portion of the book is concerned with the Labor Court and the major decisions of that unique tribunal, this is not the focus of Dean Robbins' interest. His stress is placed rather upon the singular way in which the Swedish labor market is governed by the joint functioning of public and private authorities. Regarded narrowly as a problem of industrial relations, the Swedish experience is noteworthy. "More important, however, is the fact that the implications of the Swedish evolution lead into some of the more basic questions concerning the nature of modern government." The governmental arrangements in the Swedish labor market as here described have considerable significance beyond the changing relationship between employers and employees in a now largely isolated but yet free corner of Europe. Both because of the collectivistic character of that relationship and because it has assumed that character within the framework of a constitutional parliamentary régime, Sweden's experience is one which should command our attention. Whether that experience "is the path of the future, or the last stage of a closing epoch of liberalism," the Swedish governmental processes open up new vistas for the student of politics. Sweden has demonstrated that functional associations can operate privately within the framework of a constitutional government, can assume governmental functions, and can at the same time preserve a high degree of autonomy. The author gives us a complete picture of this capitalist democracy where the principle of unionism prevails, not as a tolerated aberration, but as an integral element in the social organization of the state. His demonstration of how order and stability can be achieved without the imminent danger of totalitarian control is one which our public authorities as well as employers and labor leaders might profitably study. It is not the Swedish way to draw up elaborate blueprints of a future society. Yet the contribution of Sweden is real, though it must be ferreted out through a detailed examination such as Dr. Robbins has undertaken. The reviewer would indicate his agreement with a concluding observation: "While the Swedish contribution is not necessarily one which can be of immediate aid in the solution of the same problem in other lands, neither is it one which can well be ignored by foreign observers. Apprehension over the future of our own national labor policy could be met by a sober consideration of the more mature Swedish developments which point in the same general direction."—ERIC CYRIL BELLQUIST.

Reciprocating interpretations of Canadians by Americans and Americans by Canadians are moving across the international boundary line in increasing volume. A. L. Burt's *Short History of Canada* (University of Minnesota Press, pp. 279, $3.00) is the most recent of these paper diplomatic envoys. It adds a bit more cultural context, a bit more historical background, and a bit more political interpretation to the relatively sketchy outlines of its contemporary predecessors. This is, however, still not the definitive history of Canada for Americans that needs to be written, though it unquestionably deserves a wide reading public. Obviously, it is not intended to be an academic source-book, but it will serve as useful a function in its lighter vein as the author's heavier textbooks have served in the classrooms of institutions of higher learning. The chapters dealing with French Canada are quite effective in illustrating the Dominion's peculiar cultural duality. Those dealing with Canada's relationship to the United States during the Revolution and the War of 1812 are more sympathetic to Canada than to us—a refreshing viewpoint for American readers, at least. The emphasis on the importance of the fur trade in Canada's history—even to date—is probably the most unique feature of the book. There is a nice piece of institutional comparison in the chapters on government. Indeed the facility in American-British-Canadian comparisons of all kinds is worthy of comment. The graphs, maps, cartoons, and other illustrations are useful.—FRANCES R. FUSSELL.

In the *European Section of Atlas of Parliamentary Government*, and the *Canadian Section of Atlas of Parliamentary Government*, separately published by the author, Everett Miller Claspy (Dowagiac, Michigan, 1939–40), teachers of comparative government will find much useful data for their lectures. In these two *Sections*, one finds election dates and results, parliamentary party statistics, names and terms of heads of states, premiers, and cabinets for more than thirty separate governmental systems, mainly European, brought down generally to 1939. Mr. Claspy avows the attempt "to outline the political history of the states of Europe and political units of the British Empire which enjoy, or have enjoyed in the past, some form of parliamentary government," but he makes no comments and has no interpretations to offer. Only the bare figures and names are there. Even these are not beyond question, because they are taken from *Current History* and *Events* magazines, the *Political Handbook of the World*, the *Statesman's Yearbook*, the *Annual Register*, and other secondary sources. Apparently, no official documents were consulted.—J. G. HEINBERG.

As of January 1, 1942, the Brazilian Administrative Department of Public Service has issued a second and much more compact and usable edition of the *Indicador da legislação e organização administrativa do executivo federal* (pp. 338). This is the first modern government manual issued by any of the Latin American countries. The main arrangement is alphabetical by ministry, preceded by the President of the Republic and the offices directly under his supervision and the Tribunal de Contas. Under these groups is given first the citations to the statutory and other authority for the existence of the various agencies and their subordinate agencies, and then a directory of the principal officials of the different entities. At the end are two indexes, one by agency and the other by person.—JAMES B. CHILDS.

INTERNATIONAL LAW AND RELATIONS

It is now especially pertinent to reappraise every aspect of the post-Versailles effort to develop an adequate international organization. So it is gratifying that we now have available Gerhard P. Pink's *The Conference of Ambassadors (Paris, 1920–1931)* (Geneva Research Centre, pp. 293, $.80 or 3.50 Swiss francs). This study, which was first presented for the diploma of the Graduate Institute of International Studies, is included in the *Geneva Studies*, Vol. XII, Nos. 4–5, for February, 1942, and carries a preface by Paul Mantoux, director of the Institute. The study is admittedly prepared from incomplete materials, since official archives containing minutes of the Conference were not available to the author. Dr. Pink outlines adequately the manner in which the Conference was set up, and develops the gradual extension of its competency until it "became a sort of European Directorate." The machinery is described by which the Principal Allied Powers, in particular, asserted their preponderance in the handling of certain problems left unsettled by the treaties of peace. These Powers took advantage of "the unclear nature of the powers [of the Conference] deliberately to make use of the Conference for tasks for which it was not created. . . . " They used either the League or the Conference, "the one or the other being employed as occasion suited, according as the solution could be reached more easily for the Great Powers and with the least responsibility on their part" (p. 277). As in the Corfu affair, the Conference provided a way of "escaping responsibility for delicate and doubtful decisions." Here was the old diplomacy in a new dress—one of the numerous steps on the road from the bilateral to the collective diplomacy—but with the familiar Big Power pressures and lack of exposure to the public eye. To the Conference were assigned important competencies concerning execution of the peace treaties, especially with respect to new boundaries and supervision of military control and other inter-Allied commissions. Geneva and Paris might lean on the other, although, on occasion, the Conference arrogated to itself functions falling well within the scope of the Covenant, thereby involving nice questions of jurisdiction and control. The book is somewhat awkwardly organized and includes a good deal of extraneous material. There is needless duplication, and one senses a certain over-stressing of the points made. None the less, the study is well documented and throws needed light on a neglected phase of the international political history of the 1920's.—IVAN M. STONE.

If the gloomy story of Hans L. Leonhardt's book, *Nazi Conquest of Danzig* (University of Chicago Press, pp. xiii, 363, $3.50), told nothing but the Free City's dismal fate during her last seven years, it would still make interesting and exciting reading despite its heavy load of source material. Danzig's lot, however, was inseparably connected with the destiny of European democracy and with the League of Nations, which guaranteed her constitution. "In Danzig, events in the Reich were repeated in slow motion" (p. 339). While it took the Nazis only a few months to crush all opposition in Germany, the Danzig opposition parties, representing 49.97 per cent of the electorate, held out against overwhelming odds for four and a half years. Their pathetic fight was watched by the friends of freedom all over Europe. Their hope, however, that the League would step in to uphold the constitution was frustrated again and again. Under the leadership of Mr. Anthony Eden, the Council of the League passed resolutions, expressed expectations, delayed action, and even connived at the ill-bred behavior of Herr Greiser, Danzig's president. One can understand Poland's desire not to antagonize the Reich, and M. Beck's "soft-pedal" policy in the Council. But, as the author puts it, "the League's impotence . . . was not wasted upon the German Chancellor, whose greatest capacity is a sense for the attractive possibilities of future disintegration" (p. 341). Mr. Eden, who in most cases was the Council's *rapporteur* on Danzig and, at one decisive session, its chairman, should have known this. Instead of strengthening conditions under which the opposition could have fought, he made room for the rule of violence. When questioned in the House of Commons about events of terror and suppression in Danzig, he gave evasive and misleading answers (p. 310). It is often said that the League failed because European democracy broke down. In the case of Danzig, so vividly described in Mr. Leonhardt's book, there is no doubt that the League contributed to the defeat of democracy. —HEINZ GURADZE.

Propaganda by Short Wave (Princeton University Press, pp. xi, 355), edited by Harwood L. Childs and John B. Whitton, summarizes the Princeton Listening Center's pioneering studies of foreign short-wave broadcasts. Systematic monitoring of the short-wave propaganda of the more important belligerent countries was commenced in November, 1939, and continued until June, 1941, when the importance of the work was recognized by the creation of an official agency—the Monitoring Service of the Federal Communications Commission. An introductory chapter by John B. Whitton traces the development of the use of radio as a technique in international politics and shows how the totalitarian states launched a "war of words" long before the League of Nations or the democracies were ready or willing to take even the first timid steps in that direction. Separate chapters by different investigators analyze the broadcasts of Germany, Britain, Italy, and France. "Atrocity Propaganda" is subjected to exhaustive analysis in a chapter by Philip E. Jacob, and Edrita Fried contributes an interesting study of "Techniques of Persuasion." The fact that no rigidly uniform pattern is followed by the various writers adds to, rather than detracts from, the effectiveness of the study, which achieves a synthesis often lacking in coöperative enterprises. It is comforting to learn from the final chapter of Harwood L. Childs that the European short-wave campaign has had little effect thus far upon the attitudes and opinions of the American people, and that one of our best defenses "is the excellence of our own informational services." He does not, however, minimize the importance of the "war for men's minds," but concludes that the United States and her allies must develop a "coördinated, convincing, and astute program of radio broadcasts" in enemy countries and throughout the world," and that "ideas, not words, are the stuff of which effective propaganda is made."—LOUISE OVERACKER.

Written with a standard vocabulary of 2,000 of the most frequently used words in the English language, Margery Perham's *Africans and British Rule* (Oxford University Press, pp. viii, 89) is addressed to African readers. Travel and residence in various parts of Africa, affiliation with African schools, and willingness to listen to the natives gave the author a variegated and fresh knowledge of African affairs. Steeped in the genuinely humanitarian tradition of British colonial thought, she puts concern for the native's welfare first. Her ideas on the means to this end are shaped by her attachment to the progressive elements in English politics. Thus, the author acknowledges and approves of the African's claim to speedy improvement of his social and economic lot and to eventual political independence. On this basis, the book patiently explains the prerequisites of such emancipatory development, the complex intricacies of the problems that present themselves, and the many difficult tasks that have to be mastered by rulers and ruled alike. Chapter 1 describes the slow and irregular growth of Britain's own government over the centuries. Chapter 2 assesses the African scene prior to European occupation. The next chapter records how British Africa was acquired and how it has been governed through successive ages. Then the uses and abuses of imperialism are taken up from the political and economic viewpoints. Finally, fundamental problems of the present and future are discussed in three chapters on "Indirect Rule and African Self-Government," "The Problems of White Colonization," and "Education and the Future." There are no startling revelations. The little book is neither discursive nor heavily overburdened with facts. But throughout it is instructive, fair-minded, and readable.—KLAUS E. KNORR.

Elizabeth R. Cameron's *Prologue to Appeasement; A Study in French Foreign Policy* (American Council on Public Affairs, pp. ix, 228, paper $3.00, cloth $3.50) is a scholarly account of France's relations with Germany from 1933 to 1936. A clear picture is given of the internal crises which so convulsed France that a strong foreign policy was impossible. Faced with internal dissension and economic depression, France tamely accepted German conscription in 1935. At her request, the League merely condemned Germany's action and warned of "appropriate measures" in the event of any *future* breach of peace and security in Europe. Vigorous French action was difficult because England, far from supporting a firm stand, sent Foreign Secretary Simon to Berlin to negotiate. Hitler was aided immensely in 1935 by friction between London and Paris. France was horrified by the Anglo-German naval agreement negotiated without her approval. While we may sympathize with England's desire to avoid a repetition of the disastrous pre-1914 naval rivalry, it is evident that Downing Street committed a major error. Coming only two months after the Stresa Conference, where a solid front against any future German aggression supposedly was established, London's action aroused deep resentment in Paris. On the other hand, Laval's notorious partiality for Italy during the Ethiopian crisis did much to irritate England at a time when German rearmament made Britain's support essential for France. Remilitarization of the Rhineland was accepted by Premier Sarraut because he hesitated, on the eve of the 1936 election, to do anything that might irritate the electorate. However, once again England was not inclined to support France in vigorous action. The *Times* calmly remarked that demilitarization of the Rhineland "was not destined to endure forever," and Lloyd George told Commons that Germany's denunciation of Locarno was no more serious than France's refusal to disarm. Mrs. Cameron vividly portrays how disunity within France and lack of coöperation between London and Paris facilitated the growth of German rearmament.—ROBERT S. MCCORDOCK.

The latest volume in the excellent series of "Yale Historical Publications" is Dr. Stetson Conn's *Gibraltar in British Diplomacy in the Eighteenth Century* (Yale University Press, pp. 317, $3.00). One of the aspects of British policy in the eighteenth century that has always seemed highly anomalous was the British government's lack of interest in its new possession of Gibraltar, occupied in 1704 during the War of the Spanish Succession. The acquisition of the Rock had in fact been largely a fortuitous affair, and its retention throughout the following decades was likewise something on which British statesmen put no great store. Upon several occasions, London came close to surrendering Gibraltar for other possessions or political advantages which seemed at the time much more important. The story of the complicated and desultory negotiations carried on during the eighteenth century over the disposition of Gibraltar has been skilfully unraveled and admirably described by Dr. Conn in this well written and readable monograph. So careful has been the author's scholarship that there will certainly be no need to cover this ground again. In addition to adequate footnotes in his text, Dr. Conn has placed at the conclusion of his study what he calls a bibliographical note, in which he gives reasoned and critical comments on his principal sources. There is also a well prepared index and a folded map tipped in at the back cover. Readers will appreciate the sixteen-page summary with which the author closes his study—a practice which other monograph writers would do well to follow.—ROBERT GALE WOOLBERT.

In a world of fantastically rapid changes of situation and opinion, the conscientious social scientist may well wonder at times whether he has not missed some significant concept or interpretation of events. One trustworthy check he can impose upon himself is to attend such a gathering as the Seventh Conference of Teachers of International Law and Related Subjects, held at Washington, D. C., April 23–25, 1941, or at least read its *Proceedings*, published by the Carnegie Endowment for International Peace (Washington, pp. xiv, 210, $1.00). Here is information, corrective, and stimulus for teacher, practitioner, and researcher. The papers, discussions, and reports deal not only with the teaching of international law and related topics generally, and in small colleges particularly, but also with vocational opportunities in the field of international law, publication of government documentary materials, research progress and procedure, and the substantive development of the law. At every turn, the discussion relates each topic to the changing international scene. Twenty pages of skillful indexing contribute to the reference value of the *Proceedings*. The eighteen months of widening catastrophe that have elapsed since this Conference was held have underscored and enhanced, not diminished, the importance of what was then said. Both insight and prescience illumined the discussions.—HENRY REIFF.

Social security, complete and implemented, might be the answer to end the question of war. At least that is the burden of *Approaches to Social Security* (International Labor Office, pp. 100, $0.50). The Atlantic Charter, document of intangibles, in the most objective of its eight points, declared for the collaboration of all nations to secure "improved labor standards, economic advancement, and social security." This little essay attempts to cast the shadow of such security over the shape of things to come. It is concerned with the third of the Four Freedoms, freedom from want. It surveys the ancient landmarks—Charlemagne's declaration (a thousand years ago) of the responsibility of each parish for poor relief; Vives' case work (four centuries ago); the English Poor Law of 1601, with compulsory taxation for financial parish assistance—and finally arrives at the more recent milestones in New Zealand, Germany, Sweden, Denmark, Australia, and Canada, and the most recent in Uruguay, Ireland, Argentina, and even Peru, Ecuador, and Rumania. The path is three-fold—social assistance, social insurance, social security. There is no documentation; the I.L.O. is sufficient guarantee of authenticity. The English is at times verbose; after all, English means the simplification of Latinity.—KEITH CLARK.

The Background of Our War (Farrar and Rinehart, Inc., pp. 279, college edition $1.50) is presented by the War Department Bureau of Public Relations, the text being based on lectures prepared for the orientation course given as a part of the soldier's basic military training. It is almost exclusively a factual account of the military developments of the present war. Eight chapters trace the events in Europe since the invasion of Poland, two deal with the struggle in the Far East since 1931, and individual chapters deal with Latin America, national defense in the United States, and America at war. There are some (usually weak) attempts at explanation, and there is a slight appeal, particularly in the concluding chapter, to patriotic emotion; some glossing is evident, as in the treatment of the results of the attack on Pearl Harbor. The biggest defect of the book however, is the absence of an adequate treatment of the issues involved in the war and the reasons for American participation. The book is recommended for a summary treatment of military developments. Numerous maps and an up-to-date list of "suggested readings" add to its value.—VERNON VAN DYKE.

Sea Power in the Pacific, 1936–1941 (Princeton University Press, pp. xiii, 80) is a selected bibliography of books, periodical articles, and maps, prepared by Werner B. Ellinger and Herbert Rosinski, and covering the period from the London Naval Conference to the beginning of the war in the Pacific. The list was virtually completed, at the Institute for Advanced Study at Princeton, before Pearl Harbor, but has acquired enhanced timeliness and utility since that event. "In the process of selection, emphasis was laid on factual information rather than political controversy, on naval strategy rather than political and economic problems, and on materials having particular relevance to the present war." Where sufficient reason appeared, however, these criteria have not been adhered to rigidly; nor have the time limits of the period covered. Within the scope of the plan, the bibliography—containing six hundred titles, and accompanied by an authors' index—leaves little to be desired.—F. A. O.

POLITICAL THEORY AND MISCELLANEOUS

Glimpses of World History (John Day Co., pp. xvi, 993, $4.00) is a child's history of the world, written by Pandit Jawaharlal Nehru between 1930 and 1933 in the form of a series of letters to his small daughter. During this period, he was serving a prison sentence for his part in the civil disobedience movement launched by the Indian National Congress party. The letters cover the political and economic history of the world from about 3000 B.C. to 1933, and a final letter brings the story down to 1938. The interest of the book does not lie in its ostensible subject, but in the occasional remarks which reveal the writer's attitude toward Great Britain and the other powers. His interpretation of history is strictly Marxist, and Soviet Russia is singled out as the criterion of all that national policy should strive for. The other states of Europe are in the death throes of a dying capitalist and imperialist system. The United States is richer, but otherwise not much better: she has been too crafty to make outright annexations and has acquired an "invisible empire" which is equally effective and excites less opposition. All the Americans "are interested in is profit, and so they take steps to control the wealth of the country. Through the control of the wealth, it is easy enough to control the people of the country, and, indeed, the land itself." Great Britain is merely the worst of a bad lot. She is a dying state, feeble, pro-fascist, and anti-democratic. During the whole of her 170 years of rule in India, she has never performed a single action that would benefit the Indian peoples. Economically, her régime has been one of consistent exploitation, and princes and landlords have been created or bolstered up so that she would have allies in her oppression. Hindu-Moslem hostility was created for the same end. Some really striking liberties are taken with the facts of history in order to support these conclusions. The embittered hostility and distrust shown by the letters shed a revealing light on the reasons why Pandit Nehru opposed Sir Stafford Cripps' offer. They are also enlightening as regards the reason for his suspicion of American offers of help in expanding India's war industries.—LENNOX A. MILLS.

Reginald Lennard's *Democracy; The Threatened Foundations* (Cambridge University Press, Macmillan Co., pp. x, 121, $1.25) is one of the short books in the series edited by Ernest Barker on "Current Problems." It is apparently meant for the general reader, but the scholar will find it an unusually penetrating statement of familiar ideas. Two historical chapters give a clear and scholarly summary of the roots and growth of British democracy. The writer is well aware that democracy in England is still unfinished business, but he demonstrates that it is a business well under way. The cause of democracy, he says, is closely bound up with democratic education and social reform; and he examines the nature of the former and the progress of the latter. "War is repugnant to democracy," but so is that peace which is poisoned by fear and suspicion. "You cannot debate in gas masks." In his short suggestive section on democracy and war, Mr. Lennard refuses to pass judgment on the British postponement of war, on the ground that the information does not yet justify a judgment. He concludes with a criticism of British followers of German organic theory—those who are in "the porticos of Moloch's temple"—and a warning to impatient young reformers that they should study the development of British democracy before yielding to the lure of totalitarian short-cut methods.—JOHN D. LEWIS.

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CLYDE F. SNIDER
University of Illinois

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The American Political Science Review

VOL. XXXVI DECEMBER, 1942 NO. 6

POWER POLITICS AND WORLD ORGANIZATION

JOHN H. HERZ
Howard University

Le Pouvoir est la manifestation suprême de la peur que l'homme fait à lui-même par ses efforts pour s'en libérer. Là est peut-être le secret le plus profond et obscur de l'histoire. Ferrero, *Pouvoir*, p. 43.

I

The current discussion of a future world order[1] has made it plain that the problem of coming international relations is of a magnitude surpassing even that of winning the war. It is not intended here to add to the rising tide of concrete plans in this field, but rather to elucidate certain proposals in the light of some basic features of the present system of international relations and, starting from a clearer picture of what is, to seek to discriminate between what is desirable and undesirable, possible and utopian. Wrong concepts of the forces underlying the present system have too often produced "peace plans" built on the sands of wishful thinking, and therefore bound to be wrecked on the rocks of reality. Disappointment caused by the failure of ill-conceived devices, in turn, is apt to produce a "realism" which ridicules any attempt to discuss international relations in terms of a possible evolution toward a more integrated stage.

Power, in modern international relations, has been the ultimate means of deciding issues and adjusting relationships among the units constituting international society. The states have regarded themselves as "sovereign" entities, not subordinated to any superior political power nor guided in their power politics by considerations of an a-political, i.e., power-alien, nature. True, power-alien elements such as economic interests of a particular group or considerations of religious, moral, sentimental, or purely personal nature have from time to time diverted policies from purely power-mechanical lines, thus, e.g., lining up a Catholic country, against its own power interests, with another Catholic country, or having a state interfere with policies of another country not for reasons of power politics, i.e., out of self-interest, but because that country persecuted certain minorities or social classes whose interests the other state strove to defend. In spite of occasional "deviations," however, power politics has asserted itself in the long run as predominant in the international realm. Exactly as economic competition *within* states once created "economic man," eventually tending to drive out all economy-alien motivations, power-competition *among* states has created "powers," tending to drive out power-alien considerations and policies. Once power has entered the field at all, this must be the necessary result. For, should any single member of the system try to replace power politics quite generally by policies based on humanitarian or similar power-alien ideals, it would merely play into the hands of its competitors and thus weaken and eventually destroy itself. Any proposal for a reform of the system has to start from a realization of the compulsion which the system exerts upon each member and the inescapability which it implies as far as the policies of each single unit are concerned.

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[1] Cf., for example, the very thorough investigations of the Commission to Study the Organization of Peace, results of which have been published in Nos. 369 and 379 of *International Conciliation* (Apr., 1941, and Apr., 1942). An excellent bibliography is contained in the *Bulletin* of the Commission, Vol. 2, Nos. 5 and 6 (May-June, 1942), prepared by Hans Aufricht.

Power competition among several units of a system eventually leads either to the predominance of one of them or to the establishment of a system where the political units balance each other, and thus can continue to exist side by side. It was this latter alternative, the existence of an equilibrium—highly precarious and ever shifting though it has been—which has enabled the "modern state-system" to govern international relations in the last centuries.

In the time of its flowering, the balance-of-power system fulfilled two main functions: (1) to enable a plurality of autonomous political units to exist side-by-side, and (2) to allow these units internally to develop their own culture as "nations," a culture based mainly upon the values of individual and group autonomy within the state. Today, however, the system not only has become unable to fulfil these two main functions, but results in the contrary of what it had achieved in its "classical" period.

Let us first regard the "external," or international, side of the problem. Here, the event which led to the destruction of the balance system was the growing, and now world-wide, interconnection of economic and other relationships in the industrial age and the ensuing interdependence of states. Under the compulsion of power-competition, each major power unit, in order to avoid dependence on any other unit, sought now to dominate ever larger regions in an effort to become "self-sufficient" and thus "secure." These attempts failed because in a shrinking world no single power can satisfy its security interests without doing harm to those of another power. The world is no longer large enough to harbor several self-contained powers. Thus the growing interdependence of the nations of the world led to the contrary of what "internationalists" had hoped its result would be; instead of making for peace and world order, it brought a struggle of powers to dominate the world in order to be secure from the world. The trend toward world domination or hegemony of a single power is but the ultimate consummation of a power-system engrafted upon an otherwise integrated world.

Within the states, an international system which allowed nations to develop an at least partly "civilized" peace-time society and economy of plenty has now resulted in what is called the totalitarian organization of state and society. Whatever the other roots of totalitarianism may be, it is easy to see what bearing power competition must have on its development. To compete successfully with other powers, states had to subordinate every realm of life and society to the requirements of war and "preparedness." Wars which used to be localized and not interfering with "ordinary civilian" life have become "total" wars which no longer recognize regions and spheres outside war, and are characterized by the destruction of mankind's accumulated wealth ("scorched earth policy," etc.) and the extermination of entire populations. But "total war" means also obliteration of any distinction between times of "peace" and of "war." Any period outside actual warfare necessarily becomes one of war preparation, since not using it for this purpose means giving an advantage to a potential enemy who does so. The relentless consequence is that states had to be organized not only so that foreign policies are conducted with an exclusive view to the furtherance of power interests, but so that every realm of the political, economic, and cultural life of individuals and groups is regulated with this same view in mind. Therefore more and more "living standards" are sacrificed for war production and war potential. Moreover, since every moral or other "inhibition" might weaken defense requirements, more and more "standards of civilization" and cultural values are discarded in favor of the fascistization of man and mind. Thus an age of liberal and individualistic tendencies in the internal life of countries has been replaced by that of régimes which consolidate populations into iron *blocs* ruled through managed and centralized mass-control, and where all of economy becomes *Wehrwirtschaft,* cultural life *Wehrkultur,* religious life *Wehrgottesdienst.* Power competition drives remaining non-totalitarian states into entering the same route. All this means the *reductio ad absurdum* of our present societal organization: Man may starve (both physically and spiritually) while in the possession of the most costly and most formidable machinery ever created for the protection of lives and goods.

History, so far, has not meant progress toward less war and conflict and more peace and harmony, but only the transfer of competition and strife from smaller to ever larger social groups. The perpetuation of this system on the world-level not only would mean that the bottom is out of our civilization (which, like every previous one, has been built on mitigation, or at least canalization and balancing, of power in certain realms and spheres), but might well signalize the decay of man as a race. Unable to escape the vicious circle of mutual fear, insecurity, and conflict for power and to eliminate the life-and-death struggle from the societies formed by his own kind, the "victor over Nature" may turn out to have been but another among Nature's abortive attempts to create a species capable of survival.

Some problems of future international relations will now be examined in the light of these facts. Provided that world-domination on the part of the totalitarian powers has been successfully averted, it must first of all be realized that the post-war world will still be one of powers. More than that, it will be a world of "total suspicion," worse than at any time before; for what happened in the years preceding the war will not so soon be forgotten. Totalitarian conduct of foreign affairs, with its utter disregard of traditional standards and its uninhibited use of any means furthering the end, lying and betraying, "fifth columnism," ideological warfare, will have left its impact, and there will probably be less confidence among individuals and nations than at any time in history. We must face the fact that this will be the basis on which to erect a better world order.

II

The various proposals for a new order of world relations can be divided roughly into three categories:[2] first, one which leaves the "sovereignty" of states basically intact while providing for their voluntary engaging in what may be called "negative obligations"—certain duties of abstention in order to eliminate or diminish the danger of war. Second, at the opposite extreme, one which would abolish nations in their capacity as independent powers and replace them by some super-state authority or government. A third category of proposals, while retaining the system of coëxisting powers, would combine them in a system with one particular "positive obligation"—their duty to concur in collective prevention of the individual use of force, a system of "collective security."

1. The first, and least ambitious, view holds that the danger of war can be ended or greatly diminished if only the nations of the world would enter into all or some of the following undertakings: in the field of military preparation, not to arm too heavily, or to renounce the use of certain weapons—in short, to reduce armaments; in the economic field, to renounce certain instruments of "economic warfare," such as high tariffs, raw material monopolies etc.—in short, to establish free, or freer, international trade relations; in the political and diplomatic field, to renounce the right to have recourse to war, at least for certain types of conflicts, and instead to settle disputes peacefully—a system of mediation or arbitration.

These are the steps and procedures commonly proposed by "internationalists," and partly tried in the practice of states during the last hundred years. Surveying these practices means surveying their failure. This could not be otherwise, since all imply an at least partial renunciation of power, while, on the other hand, the system of power politics, with power competition and ensuing individual and collective insecurity, is left intact. These proposals thus mean putting the cart before the horse. Even a simultaneous and entirely "equal" renunciation of certain uses or instruments of power on the part of all states (if ever practicable) would in its continued fulfilment be guaranteed only by the good-will and honesty of each power, over-confidence in which, on the part of those to whom the conduct of affairs is entrusted, might be considered a dereliction of their duty toward those whose lives and goods are to be protected against foreign spoliation. In a system of power politics, any major concession can be due only to temporary forgetfulness of the necessities of the system, constituting, as it would, a gratuitous favor to those who would not take part in the engagement or were least faithful in its execution.

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[2] Among these we need not include proposals which, though sometimes under high-sounding new names such as geopolitics, are nothing but elaborations of the existing system of limitless power politics. It is significant that *Geo-Politik* has been the ideological basis of Nazi foreign policy. Its adoption by the victors of this war would not make the system any different from what it was when Haushofer inspired Hitler. However, it must be recognized that such proposals contain the only *realistic* alternative to a more integrated international system. Future wars for supremacy would be wars between a few super-powers organized in *Grossräumen*. There is no going back to the system of sixty independent nation-states.

Disarmament, in particular, which so often has been said to constitute the main prerequisite for the abolition of "insecurity" in the world, could in reality be obtained only *after* the establishment of a firm security system, since only a lessening of the feeling of insecurity could bring about a general reduction of power instruments. Moreover, war *potentials* constituting the backbone of modern preparedness, mere reduction of actual armaments would eliminate neither war's possibility nor its root, the competition of states for power.

For the same reason, any large amount of economic internationalism cannot be preparatory for, but only consecutive to, a state of lessened political tension. Recent events have shown that the requirements of power politics, in this realm, prevail even over strong tendencies and interests of an economic nature which in themselves would be in favor of increased and freer trade relations. In the nineteenth century, an even higher degree of economic internationalism and of corresponding vested interests in the continuation of the peace which makes these relationships possible was not enough to change basic power policies. "In the long run power politics demands power economics."[3]

As for arbitration, its apparent success in certain instances has been due to the fact that recourse to it has been had mainly in the case of minor issues or minor countries, while *maxima non curat praetor*. Under the prevailing system, similar efforts to take out of power politics certain issues or regions and to administer them in a de-politicized way, e.g., "international" control of "backward" regions, "neutralization" of strategically important areas, straits, canals, etc., or "technical" management of minority or migration problems, likewise ended in failure. In times of international crisis, these realms were regularly reoccupied by power interests. With the extension of the power system all over the world, any power-alien latitude still open to earlier periods has become impossible. As long as this system lasts, it cannot be restored.

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[3] G. Schwarzenberger, *Power Politics* (1941), p. 271.

2. Those disappointed with the aforementioned procedures are today, for the most part, looking toward the establishment of "world government" in the form of a genuine federal government over and above existing states. In order to understand the implications of this scheme, one must first realize that it would by no means abolish "power," or even mitigate it, but would merely transfer its central seat from the "sovereign" states to a new higher unit of governmental power, the federal union (or whatever its name). Whatever the details of such a set-up, there must be a central authority with legal competence and actual power to monopolize the use of force in the world, thus depriving the member-"states" of their real power (whatever secondary competences might be left to them).

A like scheme cannot from the outset be called utopian. History has witnessed many shifts from one kind of societal organization to another, involving a transfer of the seat of ultimate power, e.g., from tribes to the *polis*, from feudal groups to the "state." Such changes, however, require also shifts of ideologies and transfers of "allegiance." Besides all organizational changes, there would, in the case here discussed, be one fundamental prerequisite: the shift of allegiance, by at least a politically effectual number of individuals, from nation-state to world-state, thus replacing national loyalities with an entirely new loyalty toward the new highest unit of authority. Where comparatively small groups are politically decisive, similar transformations might imaginably take place without too great difficulty, but in an age of politically activated masses whose ultimate loyalties have come to be molded almost exclusively into one toward the nation, the change from nation-state to world-federation would require more than ever a tremendous political effort. Nothing short of an ideological and spiritual revolution would be required in order to eradicate "nationalism" from the minds in favor of "world patriotism." This, however, is not likely to happen in a world of still mutually suspicious "powers."

It would be illusory to think that the new allegiance might simply be added to existing loyalties. Eventual decisive power cannot be expected where loyalties are divided. Since the main function of the new world government would for a long time be to prevent recourse to force on the part of member-units (outlawry of war and monopoly of coercion by the federal government), such division of loyalties would in all likelihood fatally hamper the functioning of the highest authority. In a test case, the federal authority would be revealed as either a sham, with one or more old-style "powers" really controlling it,[4] or else as a pseudo-authority with no actual power at all, in which event, at a critical juncture, it would simply disintegrate into its component parts, the founding powers. Thus, a lack of ideological and psychological prerequisites, not politico-organizational difficulties, would appear to make this plan impracticable. This does not mean that, once the problem of security and power-competition has been solved, federalism or some similar form of more integrated world-government might not gradually evolve from the new basis. But, for the reasons stated, it seems too radical a step from the existing system of power politics toward a new order of international relations.[5]

3. A system of "collective security" would be midway between impracticable super-state government and ineffectual obligations of abstention from certain activities. It means the establishment of a system of general security through collective sanctions against the use of force. Recourse to force on the part of any individual state as a means of power politics would immediately encounter the active opposition of a coalition of all remaining states which would have committed themselves beforehand to the enforcement of peace in such an event. Apparently, this system would increase

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[4] This would probably appear first of all in the sphere of military organization' regarding the control of the "international army" or "federal police force," which' after all, must be stationed somewhere, with ultimate command emanating from somebody, etc.

[5] The foregoing discussion has been concerned with federalism as a proposal for *world* government, and not with the various plans propounded for one or another *regional* federations of existing states. Such schemes may be entirely practicable, but obviously would leave the major problem, that of competing power units, unsolved.

the range and possibilities of war instead of diminishing them, because it would replace the individual power's "right" to make war by a duty to make war, and a world-wide war at that, in the event of individual aggression. The underlying idea, of course, is to eliminate total wars by the threat of a still more total one, since each state resorting to war or other violence would have to face a world-wide coalition, with the result—so it is hoped—that the very threat of such opposition would deter it from starting such a venture.

This scheme would not do away with the existing society of states as such. It would not even eliminate the "power" of states as a basis of international relationships. However, it would organize the use of power in such a manner as to avoid the vicious circle into which traditional power politics, with its ever-increasing "insecurity because of mutual dependence," has run. Organized collective use of force, or the threat of its application, would be made the instrument for preventing or suppressing its individual application. The deadlock of a system under which insecurity makes for wars, and wars—since they cannot give any power that real security which today could come only from world-domination—engender more insecurity, would be broken. It would mean the adaptation of the balance-of-power principle to modern conditions. Since every war today, through the mechanism of power-competition, tends eventually to involve all powers, these would ultimately have to take part in an attempt to reëstablish the balance anyway. Therefore, each of them would seem to have more interest in preventing such "unorganized" wars than in its own continued right to make, or abstain from, wars whenever it pleases. Since today no single power is independent enough to play the rôle which Great Britain traditionally played vis-à-vis the Continent, namely, that of the decisive weight which could be thrown into the balance to turn the scales one way or the other, a balance creating general security can be established only through collectivization of the force to be thrown against its attempted individual use. This presupposes that the system be world-wide, and that the outlawed individual recourse to force, if occurring at all, remain limited to single cases and powers. Otherwise the result would be merely the formation of another system of antagonistic *blocs* and alliances.

What are the chances for the working of such a scheme, if ever adopted? As one knows, it has not worked during the League of

Nations period. But the difficulties encountered were not those mentioned by most of the more skeptical observers. Thus the determination of the aggressor in a particular situation—a problem often pictured as one of insuperable difficulty—in practice proved easy, at any rate so far as technical standards of determining who "first started it" were concerned. Here, the situation used to be clear and unequivocal.[6] Although certain standards of determination will have to be worked out, along with the whole machinery of the system, this problem seems to be of comparatively minor difficulty. A further objection was that collective sanctions would require common preparation for hypothetical wars of every imaginable combination—grand strategies, so to speak, against every state by all remaining powers. This, it was said, would defeat the whole scheme, since the potential aggressor would have to coöperate in, and thus know, the plan for its own defeat. In reality, this means only that plans for sanctions would have to be adopted after the aggression has occurred and the aggressor has been duly determined. While this would give the aggressor the advantage of time gained by surprise, it would not appear likely that even in an age of *Blitzkrieg* all or the major part of the other states could be overwhelmed before having a chance to react. If all states are ready to participate in sanctions, even after the immediate victim of aggression has been overrun, permanent success of the aggressor seems scarcely possible.

The fundamental difficulty is not technical or strategic, but political and psychological. Beyond organizational, institutional, and legal requirements, the system presupposes for its successful working one main politico-psychological *datum:* the realization, on the part of political leadership and public opinion in the various countries, that each country in the world, be it geographically or politically "near" to or "remote" from the location of immediate conflict and aggression, has exactly the same, and a superlative, interest in its suppression. Any rational analysis of recent developments of power politics makes it clear that from the viewpoint of each state's very existence, its interests are equally involved by any breach of peace wherever occurring. This conclusion is based upon a realistic appraisal of such facts as the changed nature of war and the universalism of the mechanism of power competition. Just as there are "no islands any more" (nor hemispheres for that matter), there are today no longer "producers" of security as opposed to "consumers," as a writer in the 'twenties[7] characterized the then allegedly diverging interests of powers regarding the fulfilment of the sanctions and obligations contained in the Covenant of the League of Nations. Any attempt to avoid this conclusion by "appeasing" aggressors or "isolating" oneself either leads to one's self-destruction or merely defers one's involvement to a moment when the situation has become more dangerous through the strengthening of the adversary. Turning from power politics to collective security, therefore, means the adoption of a more rational scheme of international relations, just as balance-of-power politics at one time meant a comparatively rational system based on the elimination of certain power-alien elements in favor of *raison d'état.*

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[6] The problem of identifying the aggressor has to be distinguished from the question of who, with respect to the underlying conflict, is right or wrong. This latter problem involves that of how "fair" and "just" decisions of international disputes can be obtained—a question touched briefly at the end of this article.

Collective security, then, rests on the realization, with appropriate action, of what the states' common interests in their continued existence require today. However, the rationality of a scheme is in itself no guarantee of its adoption or application. The basic problem confronting a plan for collective security is whether people throughout the world are likely to realize the fact and are ready to act in a bold and novel way. More skeptically inclined persons will probably pronounce this requirement fatal. They will doubt whether people at large will suddenly adjudge necessary, and even advantageous, what for centuries has run counter to the actual or imaginary interests of their countries and still today appears to many as nothing but self-denying sacrifice. To this, one can reply only that men sometimes learn from bitter experience. While it took the average Englishman from World War times to 1940 to comprehend that the airplane had changed his country's strategic, and therewith political, position, actual bombardment, coupled with the threat of immediate invasion, caused him to learn in a few days what he failed to learn in twenty years. Similarly, Pearl Harbor and what may ensue will have opened the eyes of many an American who failed to realize earlier that sanctions against a Japan still at the boundary of China proper might have been preferable to a "war of survival." The question, of course, remains whether the impact of experience will be sufficiently strong and general, and not too quickly forgotten. Without engaging in futile prophecies, it can at any rate be stated that there is no inevitability in provincialism, considering that, e.g., the man from Oregon (and even the Kansan) well understands that an attack on New York or Florida is of immediate concern to him, while New Zealanders (and even some South Africans) view similarly an assault on Britain. Lack of these politico-psychological prerequisites, it is true, accounts for the failure of the League's system of sanctions; nor was Ethiopia the only or nearest of those "far-away countries" of which the leaders of the decisive powers pretended to "know nothing." But those studying the details of the first and only sanctions experiment also know that success was actually nearer than commonly realized. The people, or at least those parts of public opinion uninfluenced by Fascist or pro-Fascist propaganda, were in most countries more advanced in grasping their real interest than were their leading statesmen. After the experience of another world war, a better understanding of the failures committed during its pre-history may bring the case for collective security sufficiently near to common people of all groups and countries to make the scheme practicable. Still, a sudden reaction toward isolationist and provincialist illusions, brought about or exploited by groups with vested interests in the previous system, may neutralize and destroy the impact of this experience on the future world settlement. If this should happen, nothing could then prevent the world from becoming the victim of the only alternative: renewed power politics, with recurring world-wide wars on a probably accelerated scale, produced by the necessity felt by one power or another to bring about a situation in which alone it could have real "security": world-dominion. Some day this aim may be achieved by somebody; but it would be in a world where the last remnants of a diversified civilization had disappeared.

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[7] S. de Madariaga.

The establishment of collective security, on the other hand, would by no means herald the millennium. It would have to take shape in an atmosphere still full of suspicion, since competing powers, just emerging from a life-and-death struggle, would still exist at its start. There would be armaments and economies geared for war; and these national systems would have to be organized for sanctions-preparedness instead of individual warfare. It might even be dangerous to change the system too quickly into one of more peaceful activities, because the new collective system would first have to stand the test of its real working, either by introducing a period of prolonged absence of violence due to general preparedness for sanctions, or by a successful application of sanctions in an actual case of aggression. One such practical application of the system would probably be sufficient to ensure peace for a long time.

Then, after a rather lengthy period of trial and transition, those policies could be inaugurated which are necessary for the transformation of the existing system into a substantially more peaceful one, but which presuppose existing security for their successful working. Thus, in the same measure as suspicion of ever-present danger of attack and the pre-possession of minds and actions with war-preparedness and security would lessen, a gradual return to more genuine peace-time activities would become possible. This would apply to all realms, internal as well as international, cultural and economic as well as political. Then, and then only, economic preparation for war could be replaced by economic and social planning for plenty within states—something which under conditions of power politics only meant weakening one's potential war strength. At the same time, an attempt could be made to establish closer international trade relations also. Step by step, with the enlargement of such activities, some reduction of armaments could be mutually agreed upon, although military preparedness could not be allowed to lapse altogether as long as the threat of effective sanctions must be maintained.

Even so, a collective security system would still be confronted with one grave challenge. It would be necessary to find a procedure for the solution of those problems which in the age of power politics were solved by force, and which now would no longer be amenable to such solution. For it must be realized that the mere elimination of force as an instrument for the settlement of international issues and relationships at first would necessarily, and only, mean freezing the existing *status quo*. Since it would be based on victory and defeat in a world war, this *status quo* would be rather arbitrary, even though based on the victory of the less totalitarian and the defeat of the more aggressive powers. Unless an effective procedure for "revision," i.e., some kind of international legislation, were devised, not even sanctions could in the long run prevent the countries of the world from rallying again in camps of real or alleged "haves" and "have nots." Changes which under prevailing power politics

RECENT RESTRICTIONS UPON RELIGIOUS LIBERTY

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Within the last five years, the Suprême Court of the United States has added decisions of greater importance to the case law of religious freedom than had been accumulated in all the years since the adoption of the Bill of Rights. The importance of two of these recent decisions rests upon the subordination of freedom of action based on sectarian beliefs to the restrictions of society as a whole. In one of the two cases, the law of society was a board of education order that school children participate in the flag salute exercise on pain of expulsion from the public schools;[1] in the other, it was peddlers' license tax ordinances.[2] Because neither of these decisions has been accepted as a firmly rooted precedent, it will be well to examine them in the light of the history of the federally secured right of religious freedom and in the light of the immediate public reactions to them.

A considerable proportion of the early emigration to the thirteen original colonies was undoubtedly due to a desire to escape religious persecution in England and on the Continent. Those colonists, however, were as insistent that their own particular form of religion be adhered to as their oppressors had been. The story of Roger Williams, who was expelled from the colony of Massachusetts because of his non-conformist views and who established the colony of Rhode Island as a sanctuary of religious tolerance, and that of Ann Hutchinson, who also was exiled from the Bay Colony for a like reason, are monuments to the intolerance of the Puritans.

But by the time of the adoption of the Constitution, the principle of religious freedom which Roger Williams so stoutly advocated and put into practice in Rhode Island had gained such headway that its omission from the law of the land was at once protested; and, significantly, the first tenet of the so-called Bill of Rights was a cure of that want: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, . . ."

It will be observed that this declaration is an inhibition only on the federal government. It does not prevent the states from doing the things thus prohibited to the Congress.[3] The amendment embodies the principle of the separation of church and state. In the words of the Supreme Court, it was designed to allow everyone under the jurisdiction of the United States to entertain such notions respecting his relation to his Maker and the duties they impose as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper, not injurious to the rights of others, and to prohibit legislation for the support of any religious tenets or the modes of worship of any sect.[4]

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[1] Minersville District v. Gobitis, 310 U.S. 586 (1940).

[2] Jones v. Opelika, 316 U.S. 584 (1942).

The right to think as one wishes regarding religion can scarcely be doubted; the question which today seems to prompt the action of the secular authorities is the right to practice religious dictates. The rule in this regard is old and sound. It is, briefly, that there is a right to practice any religious principle and teach any religious doctrine which does not, as above indicated, injure the personal rights of others, nor offend the laws established by society for peace and morality.[5] The example that at once comes to mind as illustrating the overreaching and abuse of religious freedom is the practice of polygamy by the Mormons. This practice conflicted with the bigamy laws of the territory of Utah, and it was held that no religious conviction supporting it could excuse a breach of the law.[6]

In one such case, the Reynolds case, the Supreme Court quoted the highly significant preamble of "An Act Establishing Religious Freedom" drafted by Thomas Jefferson for the state of Virginia: "That to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on the opposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty. . . ." It was time enough, the Act declared, to invoke the powers of civil government when the practice of opinions resulted in overt breaches of peace and good order.

In keeping with these principles, the federal courts have refused to review a decision of an ecclesiastical tribunal on religious matters.[7] Nor would they question a will creating an endowment for a school and providing that no religion be taught there, nor any cleric be allowed on the grounds.[8] On the other hand, a prosecution of persons pretending to occult powers as a part of a scheme to use the mails to defraud is no violation of the First Amendment.[9]

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[3] Permoli v. New Orleans, 3 How. 589, 609 (1845).

[4] Davis v. Beason, 133 U.S. 333, 342 (1890).

[5] Watson v. Jones, 13 Wall. 679 (1871).

[6] Reynolds v. United States, 98 U.S. 145 (1878); Davis v. Beason, 133 U.S. 333 (1890).

[7] Watson v. Jones, 13 Wall, 679 (1871).

The Fourteenth Amendment has now become recognized as a bulwark against state infringement of the same religious liberties which the First Amendment secured from federal interference.[10] Religious freedom is so elementary to the concept of ordered "liberty" that it must be said to be within the meaning of that term in the Fourteenth Amendment,[11] which reads, in pertinent parts, as follows: " . . . nor shall any state deprive any person of . . . liberty, . . . , without due process of law, . . ." The liberty of religion protected from state interference by this amendment includes the absolute right of any person to entertain whatever views regarding religion his conscience may dictate, and the right to exercise those beliefs in such ceremonies and practices as do not conflict with the laws of society for peace and good morals. Any invasion by a state of the right to believe as one sees fit would undoubtedly be considered arbitrary, and hence violative of due process; and so would a state infringement of the right to exercise those religious beliefs unless such exercise conflicted with the secular laws regarding peace and good morals.

This brief review brings us to a consideration of the cases decided by the Supreme Court in the last five years. A small religious sect or society known as Jehovah's Witnesses has served as the guinea pig for all the important cases in this period.

The Jehovah's Witnesses are the followers of the religious doctrines formulated by the late pastor, Charles T. Russell. Russell was born in Pittsburgh in 1852 and was brought up in the Presbyterian faith. At the age of sixteen, he decided that the then existing schools of religious thought were wrong, and he built up a religion of his own, centered around calculations as to the second coming of Christ and the battle of Armageddon. His followers, formerly known as "Russellites" but adopting the name "Jehovah's Witnesses" in 1931, believe that their highest function is to disseminate their interpretations of the Bible and their religious beliefs. To accomplish this purpose, a non-profit, non-stock corporation was founded in 1884 under the laws of Pennsylvania, and now known as the Watch Tower Bible and Tract Society. The corporation owns printing plants located in Brooklyn, New York, Berne (Switzerland), and other places, and these plants are devoted to the printing of books, magazines, and pamphlets embodying the Witnesses' beliefs. The corporation also supplies Witnesses with phonographs, public address cars, and recorded explanations of the contents of the large volume of printed matter. Armed with the Society's publications and with the portable phonographs, individual Witnesses carry out their conviction that they must spread the gospel as they see it by street corner and door-to-door distribution of the books and bulletins.

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[8] Vidal *et al.* v. Girard's Executor, 2 How., 43 U.S. 126 (1844).

[9] New v. United States, 245 Fed. 710 (1917). See also "Criminal Aspects of Fortune-Telling," *Moody's Monthly*, July, 1942, by Pvt. I. H. Rubenstein. Rubenstein was prompted to write this article by the increase of fortune-tellers as an incident of the present war.

[10] See Hamilton v. Regents, 293 U.S. 245 (1934).

[11] See Palko v. Connecticut, 302 U.S. 319 (1937). It should be noted that most state constitutions already contain provisions similar to those of the First Amendment of the federal constitution.

Publications of the Society contain highly contentious teachings. They attack all institutionalized churches and sects as things of Satan. The members decry any form of religious ceremony and, in this connection, they refuse to salute the flag because they believe that that practice runs counter to the commandment that they should not bow down to any "graven image."[12] The Society teaches "that we are not of this world" and discourages Witnesses from participation in politics or the support of war. Each Witness claims to be a minister of the gospel.[13]

These beliefs have occasioned intense animosity in every state of the Union, and the virulent attacks on institutionalized religion, particularly the Catholic church, are highly offensive to many people. Small town officials are flooded with protests on those days when the "witnessing" activities are being carried on. As a result, peddling and solicitation ordinances have been applied as a restraining mechanism. The religious convictions against the flag salute and against military service have aroused the ire of patriotic groups such as veterans' organizations, and this has occasioned further protests and often mob violence. In those communities where local or state law requires that children in public schools salute the flag, numerous school children adhering to the Jehovah's Witnesses' belief have been expelled for refusing to do so.

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[12] The Jehovah's Witnesses' position somewhat resembles that of the early Christians who were martyred for rejecting the symbols of the self-deified Roman emperors. The resemblance is incomplete, however, because the flag has no parallel religious significance.

[13] This claim has been advanced before local boards of the Selective Service System as the basis for demands by individual Witnesses for draft exemption under Section 5(d) of the Selective Training and Service System Act of 1940. In Opinion No. 14, Vol. III, National Headquarters Selective Service System, it was recognized that those Jehovah's Witnesses who devoted their full time to the Society's activities were in a position to be considered by local boards as ministers of the gospel.

In due course, these questions have come before the Supreme Court. The first of the decisions, in 1938, involved an ordinance of the city of Griffin, Georgia, making it a nuisance to distribute literature such as leaflets and handbooks within the city limits without first obtaining permission of the city manager.[14] The defendant, Alma Lovell, a Jehovah's Witness, was convicted because she distributed Watch Tower and Bible Tract Society literature without seeking a permit. In holding the Griffin ordinance unconstitutional, the federal Supreme Court invoked the free speech and free press guarantees of the Fourteenth Amendment, stating that the local law was void on its face because it forbade every sort of distribution except such as the city manager saw fit to allow. The significance of this opinion to religious freedom was the tacit and not much disputed acknowledgment that free religious expression is protected by the Constitution's free speech and free press guarantees.

The next case extended the above rule to an Irvington, New Jersey, ordinance requiring canvassers and peddlers to register with the chief of police and secure a permit from him.[15] The provision which allowed the chief of police to refuse a permit, if he determined that the applicant's character was not good or his canvassing project not free from fraud, was held to give the local officer too great a discretion in deciding for himself what ideas were good or bad. The "free speech" involved was again free religious speech.

In Cantwell v. Connecticut, the defendant Witnesses ignored a state law requiring that before persons might solicit money for a religious cause they must first apply to the secretary of the local public welfare council, who was charged with the responsibility of providing a certificate if he found the cause to be a religious one.[16] This, the Supreme Court ruled, unconstitutionally authorized the secretary of the public welfare council to censor religion. The necessity that he pass upon the question of what was or was not a religious cause was a prior restraint on the freedom of religion. It was conceded that if fraud occurred under the guise of religion, it could be punished, and again if a general system of regulation of solicitation were established without any religious test, and not unreasonably burdening solicitation, it would be valid.

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[14] Lovell v. Griffin, 303 U.S. 444 (1938).

[15] Schneider v. Irvington, 308 U.S. 147 (1939).

[16] 310 U.S. 296 (1940).

Cantwell not only had been convicted of soliciting without the required certificate, but he was also convicted on a charge of inciting a breach of peace. His street-corner phonograph recital had attacked institutionalized religions and had aroused the ire of a Catholic audience. The Court said that even though the expression of this view of religion might be very offensive to some, yet no conviction could be predicated upon it, because the right of freedom of expression protected it.

These three cases were favorable to the Jehovah's Witnesses with regard to their right to distribute religious literature, to solicit funds, and to present peaceably their unorthodox views. The Cantwell case reiterated the well established rule that the right to think and believe what one wishes about religion is absolute, while the right to act and speak in accordance with those views is subject to limitation in the interest of peace and good order. Cantwell's demeanor had been courteous. He might not have fared so well had it been otherwise. In 1942, in Chaplinsky v. New Hampshire, the Court considered the case of an over-zealous Witness convicted under a New Hampshire statute against the public use of abusive language against others. The defendant had called a police officer a "damned Fascist" and "a god-damned racketeer." The Court did not think this an exercise of religion, since the statements contributed nothing to the exposition of the defendant's ideas. The so-called "fighting words" were held not to be under the protection of the Constitution 315 U.S. 568 (1942).[17]

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[17] The objection is often made that one religious sect should not be protected by constitutional guarantees when its members verbally abuse other religions. A test of this view came under a New Jersey statute which made it a misdemeanor to make statements in the hearing of two or more persons which incite or advocate hatred against any group on the ground of race or religion. In a case involving German-American Bund antisemitic utterances, the New Jersey supreme court held this statute so vague that it conflicted with the free-speech and religious-freedom guarantees of the Fourteenth Amendment. State v. Klapprott, 127 N.J.L. 395 (1941). Jehovah's Witnesses had been prosecuted under this same statute. But see Cantwell

In a case arising in New Hampshire, the Supreme Court upheld a state statute prohibiting street parades without a special license.[18] A group of Jehovah's Witnesses had marched in a line carrying signs along a busy intersection in the city of Manchester on a Saturday night. The act, as limited by state decisions to apply only to formation marches in a public thoroughfare, was ruled to be a reasonable police measure; freedom of assembly and of expression giving way slightly to public convenience. These decisions resulted in no discussion or public reaction of any moment, and appear to have been generally accepted as sound.

The two decisions mentioned at the outset remain to be considered. One was in 1940 and the other in 1942. The earlier was Minersville District v. Gobitis, 310 U.S. 586 (1940). The school board of the Minersville school district made a ruling that all children attending the public schools of the district should give the flag salute at the opening of the school day. The children of Walter Gobitis attended those schools, being, however, Jehovah's Witnesses, and as such holding the religious conviction that to salute the flag was to disobey the commandment of the Bible against obeisance to a graven image. They were expelled; and Gobitis applied to the federal district court for an injunction against enforcement of the expulsion order.

On December 1, 1937, Federal District Judge Maris denied the defendant school district's motion to dismiss the injunction suit.[19] He said public officials should not question the religious basis of a sincere refusal to act when public safety, health, or morals, or personal or property rights, were not prejudiced by such refusal; the refusal to salute the flag because of religious convictions did not involve such dangers. It was pointed out that the effect of the ruling of the school board was to make the flag, which is a symbol of religious liberty, a means of imposing a religious test as a condition of receiving the benefits of public education. Later, Judge

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v. Connecticut, 310 U.S. 296, 309, and 310 (1940), discussed above, in which the federal Supreme Court indicated that the free speech guarantees of the First and Fourteenth Amendments did not protect statements so profane, indecent, or abusive to the person of a listener as to amount to a breach of peace.

[18] Cox v. New Hampshire, 312 U.S. 569 (1941). And compare Leiby v. Manchester, 117 F. (2d) 661, holding that the distributors of literature and periodicals must comply with an ordinance requiring buttons to be secured from the superintendent of schools, who had no discretion to refuse them. Cert. den. 313 U.S. 562 (1941).

[19] 21 F. Supp. 581, E.D. Pa.

Maris granted the requested injunction against the enforcement of the "salute or be expelled" order of the school board.[20] It may be noted parenthetically here that in the years 1937 and 1938 the Department of Justice received exactly three letters concerning the Jehovah's Witnesses; the following year, 1939, apparently as a result of American reactions to the spreading conflict in Europe, numerous complaints were made to the Department regarding attacks upon the Witnesses.

On March 4, 1940, the United States Circuit Court of Appeals for the Third Circuit sustained the Gobitis injunction in a cogent opinion.[21] The Court noted that the conflict boiled down to a question of whether the flag-salute requirement was such a rule of society for safety and good morals as must take precedence over liberty of conscience. It observed that the Minersville school board rule imposed, not a prohibition upon action, but rather a command to do an act, and concluded that it was not of sufficient moment as a device for instilling respect for country to outweigh freedom of religious conscience. If invoked, it was held, the rule denied the religious freedom on which is based a great measure of the respect due this nation and its flag.

But both lower courts were reversed in the federal Supreme Court on June 3, 1940.[22] Mr. Justice Frankfurter, speaking for the eight-to-one majority of the Court, acknowledged the question as being one of balancing a rule of political society against considerations of religious freedom. His conclusion, however, ran contrary to that of the circuit court. The necessity for cohesive patriotic sentiments was felt to be more important than the non-conformist religious views of the Witnesses. Said the majority:

> "Our present task then, . . . is to reconcile two rights in order to prevent either from destroying the other. . . . National unity is the basis of national security. . . The precise issue, then, for us to decide is whether the legislatures of the various states and the authorities in a thousand counties and school districts of this country are barred from determining the appropriateness of various means to evoke that unifying sentiment without which there can ultimately be no liberties, civil or religious. . .

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[20] 24 F. Supp. 271, E.D. Pa., June 18, 1938.

[21] 108 Fed. (2d) 683.

[22] The Supreme Court had on four previous occasions upheld flag salute regulations in *per curiam* decisions: Leoles v. Landers *et al.*, 302 U.S. 656 (1937); Hering v. State Board of Education, 303 U.S. 624 (1938); Gabrielli v. Knickerbocker, 306 U.S. 621 (1939); and Johnson v. Deerfield, 306 U.S. 621 (1939), rehearing denied, 307 U.S. 650 (1939).

So to hold would in effect make us the school board for the country. That authority has not been given to this Court, nor should we assume it."

The Court then declined to question the choice by the school board of the flag exercise as an appropriate means to instill patriotic sentiment.

Admittedly, there are difficult questions involved here. Before attempting to suggest a solution, it will be well to review the effect of the decision.

Between June 12 and June 20, 1940, hundreds of attacks upon the Witnesses were reported to the Department of Justice. Several were of such violence that it was deemed advisable to have the Federal Bureau of Investigation look into them. At Kennebunk, Maine, the Kingdom Hall was burned. At Rockville, Maryland, the police assisted a mob in dispersing a Bible meeting. At Litchfield, Illinois, practically the entire town mobbed a company of some sixty Witnesses who were canvassing it, and it was necessary to call on the state troopers to protect the members of the sect. Several Witnesses were charged with riotous conspiracy at Connersville, Indiana, their attorney was mobbed, and he and several other Witnesses who had attended the arraignment were beaten and driven out of town. At Jackson, Mississippi, members of a veterans' organization, led by an individual claiming the rank of major, forcibly removed a number of Witnesses and their trailer homes from the town.

Three instances of such vigilantism led by state or municipal officers caused the Department of Justice to seek indictments against the officers for violation of the Civil Rights Act.[23] Jehovah's Witnesses conventions in July, 1940, were held in twenty cities in some fifteen states. At the urgent request of the Department of Justice, through the United States attorneys, local law enforcement officers were induced to give these conventions adequate protection, so that no violence attended. In this connection, it should be noted also that persecution of the Witnesses is peculiarly a small town and rural community phenomenon, whereas the conventions were held in larger cities.

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[23] Sec. 52, T. 18, U.S.C. The respective grand juries refused to indict. Then an information was filed in the worst of the three assaults in which a chief of police and deputy sheriff had forced a group of Jehovah's Witnesses to drink large doses of castor oil and had paraded the victims through the streets of Richwood, West Virginia, tied together with police department rope. The trial of this outrage resulted in a speedy conviction.

In the two years following the decision, the files of the Department of Justice reflect an uninterrupted record of violence and persecution of the Witnesses. Almost without exception, the flag and the flag salute can be found as the percussion cap that sets off these acts.

Attempts have been made to prosecute school children who had been expelled under "salute or be expelled" regulations on the ground that such children were incorrigible delinquents.[24] The parents have been prosecuted for failure to make their children attend school.[25] In Oklahoma, a group of Witness children, expelled from the Woods county public schools for refusal to salute the flag, were being tutored by an ex-school teacher in her home. She now has been convicted of failing to require the flag salute in her private classes, although she had formulated a different exercise, consisting of a pledge of allegiance to God and country and expressing respect for the flag.[26]

Attempts have been made to enforce ordinances requiring the flag salute as a condition precedent to the right to distribute literature.[27] Mississippi has enacted a statute, allegedly prompted by the stand of the Jehovah's Witnesses against the flag salute, making it a crime to distribute printed matter calculated to encourage disloyalty to the United States.[28] Numerous Witnesses have been indicted under this act because they distributed literature explaining the sect's opposition to the flag salute.[29] The flag has been used in a manner bordering on immorality by mobs which have baited groups of Jehovah's Witnesses throughout the country. Mayoralty courts and justice of peace courts in nearly every state in the Union have entertained evidence relative to the refusal of the Witnesses to compromise their religious convictions about the flag as an excuse to convict them on charges of breach of the peace, inciting to riot, violation of peddling ordinances, and other misdemeanors. Few such convictions, however, have been honored on appeal to courts of record.

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[24] *In re* Lefebvre, 20 Atl. 2nd, 185. *In re* Jones, 24 N.Y. Supp. 2nd, 10 (1940).

[25] *In re* La Trecchia, N.J. Sup. Ct. decided June 30, 1942, holding that the parents cannot be fined when the school board expels their children for refusing to salute the flag; West Virginia v. Mercante, C. Ct. Hancock Co., W.Va., June 1, 1942, to the same effect; and see the following pending cases: South Dakota v. Davis and wife, Sup. Ct. S.D.; Arizona v. Davis, Sup. Ct. Ariz.; Partian v. Oklahoma, Okla. Crim. Ct. of Appeals; Pendley v. Oklahoma, Okla. Crim. Ct. of Appeals; Pendley v. Oklahoma, Okla. Crim. Ct. of Appeals. Cf. People v. Sandstrom, 279 N.Y. 523 (1939).

[26] Carter-Mort v. Oklahoma, pending upon appeal, Okla. Crim. Ct. of Appeals.

[27] Kennedy et al. v. City of Moscow, Dist. Ct. Idaho. 39 F. Supp. 26 (1941). Reid et al. v. Brookville et al., Dist. Ct., W.D. Pa., decided May 2, 1941.

[28] H.R. 689 (Mo.) Regular Legislative Session, 1942.

[29] One of these cases, Mississippi v. Mills and Wife, is now pending on appeal in the Miss. Sup. Ct.

This ugly picture of the two years following the Gobitis decision is an eloquent argument in support of the minority contention of Mr. Justice Stone. The placing of symbolic exercises on a higher plane than freedom of conscience has made this symbol an instrument of oppression of a religious minority. The flag has been violated by its misuse to deny the very freedoms it is intended to represent—the freedoms which themselves best engender a healthy "cohesive" respect for national institutions. In short, public health, safety, and morals have not been fortified by the compulsory flag salute laws. Indeed, the result has been quite the contrary.

It seems probable that a reversal of that ruling would profoundly enhance respect for the flag.[30] The vigor of constitutional guarantees such as religious freedom, on which respect for flag and country must depend, stems from their ever renewed public recognition and observance. How much more effective an instrument of patriotic education it would be if the flag salute itself were made a practical daily exercise of a fundamental liberty, a liberty which is one of the four great freedoms for which this nation is now fighting!

Perhaps, however, Congress has by-passed the constitutional issue here involved and supplied a statutory solution. On June 22, 1942, Public Law No. 623, codifying the rules and customs regarding the use of and respect due the flag of the United States, became law. Section 7 of that act reads as follows:

> "That the pledge of allegiance to the flag, 'I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation indivisible, with liberty and justice for all,' be rendered by standing with the right hand over the heart; extending the hand, palm upward, toward the flag at the words 'to the flag' and holding this position until the end, when the hand drops to the side. However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress. Persons in uniform shall render the military salute."

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[30] In the most recent case, the supreme court of Kansas has held that the refusal to salute the flag could not under the Kansas constitution be a ground for expelling a pupil from the Kansas public schools. Kansas v. Smith, decided July 10, 1942.

This measure was sponsored by the American Legion, and to that organization must go the credit for the statesmanship reflected in the recognition of "respect" as the most universally acceptable and tolerant word to be used in connection with the flag.

Observe that full respect is all that is called for from civilians. Such respect may be shown merely by standing at attention. It is submitted that this law of Congress lays down a federal standard with regard to a matter which is primarily a concern of the national government, and therefore state and local regulations demanding a different standard of performance must give way entirely, or at least be made to conform. Speaking more concretely, a school board order respecting flag salute exercises should not now be permitted to exact more of the pupil with religious scruples against the flag salute than that he should stand at attention while the exercise is being conducted. Full respect will thus be shown as measured by the paramount federal law, and the Jehovah's Witnesses have again and again affirmed that they respect the flag and the principles which it represents. The Department of Justice has been assured that the Witnesses have no objection to standing at attention during the flag salute exercise. Finally, it is worthy of note that in the case next to be discussed three members of the majority of the Court in the Gobitis case have gratuitously acknowledged that the flag salute ruling was wrongly decided.[31]

This brings us to a consideration of the most recent religious freedom opinion of the Supreme Court, which involved variously a book and magazine peddler's licensing ordinance of the city of Opelika, Alabama,[32] a peddler's licensing ordinance of the city of

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[31] Mr. Justice Black, Mr. Justice Douglas, and Mr. Justice Murphy joined in the following remarks, Jones v. Opelika, etc., decided June 8, 1942: "The opinion of the Court sanctions a device which in our opinion suppresses or tends to suppress the free exercise of a religion practiced by a minority group. This is but another step in the direction which Minersville School District v. Gobitis, 310 U.S. 586, took against the same religious minority and is a logical extension of the principles upon which that decision rested. Since we joined in the opinion in the Gobitis case, we think this is an appropriate occasion to state that we now believe that it was also wrongly decided. Certainly our democratic form of government functioning under the historic Bill of Rights has a high responsibility to accommodate itself to the religious views of minorities, however unpopular and unorthodox those views may be. The First Amendment does not put the right freely to exercise religion in a subordinate position. We fear, however, that the opinions in this and in the Gobitis case do exactly that."

[32] The amount of the tax was $10 per annum, $5 for transient book agents.

Fort Smith, Arkansas,[33] and a similar ordinance of the city of Casa Grande, Arizona.[34] Each ordinance exacted a tax of varying amounts as a condition precedent to the right to peddle, and in each case Jehovah's Witnesses had been convicted of offending these ordinances by distributing religious literature, asking and receiving in return a "contribution" usually of a sum fixed as the price of the particular piece of literature.

The Supreme Court, by a five to four majority, ruled that sales of religious literature by the Witnesses were more commercial than religious transactions, and therefore such transactions could properly be subjected to a non-discriminatory privilege tax.

In a dissent filed by Chief Justice Stone, it is pointed out that the license fees were straight taxes and were no part of any reasonable regulatory scheme, that the tax measures were enacted for ordinary business enterprises, while the Witnesses' activity was religious and their money transactions in the nature of solicitation. He concluded that such taxes were a prior restraint upon the defendants' religious activities, and hence offended the religious freedom guarantees of the Fourteenth Amendment:

> " . . . It seems fairly obvious that if the present taxes, laid in small communities upon peripatetic religious propagandists, are to be sustained, a way has been found for the effective suppression of speech and press and religion despite constitutional guaranties. The very taxes now before us are better adapted to that end than were the stamp taxes which so successfully curtailed the dissemination of ideas by eighteenth-century newspapers and pamphleteers, and which were a moving cause of the American Revolution. See Collett, *History of the Taxes on Knowledge,* vol. 1, c. 1; May, *Constitutional History of England,* 7th ed., vol. 2, p. 245; Hanson, *Government and the Press, 1695–1763,* pp. 7–14; Morison, *The English Newspaper, 1622–1932,* pp. 83–88; Grosjean v. American Press Co. *supra,* 245–49. Vivid recollections of the effect of those taxes on the freedom of the press survived to inspire the adoption of the First Amendment."

In a separate dissent, Mr. Justice Murphy emphasizes that the purpose of the activity in question was not commercial, but was rather dissemination of religious views. The burden of the tax was, therefore, directly upon freedom of speech, of the press, and of religion.

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[33] The amount of the tax was $25 per month, $10 per week, or $2.50 per day.

[34] The amount of the tax was $25 per quarter-year.

This decision caused an immediate reaction in the press. The majority of the editorials examined expressed dissatisfaction with the result reached.[35] The minority opinions were lauded. While this reaction can be in part attributed to the fear that freedom of the press was unfavorably involved, it nevertheless was heartening to observe that so unpopular a minority sect as Jehovah's Witnesses found so many ready champions to defend its constitutional rights. Some papers gave the opinion straight reporting treatment, some editorialized on the continuation of split opinions in the high court, and a very few sided with the majority.[36]

Too little time has passed for any possible trend occasioned by the license tax decision to be accurately reflected in the Department of Justice files, but already letters have been received requesting copies of the opinion for information as a basis for drafting peddlers' licensing ordinances for the avowed purpose of putting a stop to Jehovah's Witnesses' activities. The thought is present that most communities will at once resort to this expedient. If this occurs, the fears of the dissenting Justices that such legislation is oppressive will appear to be justified.

The following comments are offered in an effort to pin down the problem, which is likely to become lost in rhetorical references to the Constitution. The gist of the majority opinion is found in the following sentence: "But it is because we view these sales as partaking more of commercial than religious or educational transactions that we find the ordinances, as here presented, valid."

This is an assumption which it will be well to consider in the light of the following facts, pro and con: *Pro:* (1) Transfer of books or other literature, and a fixed payment in return, having the appearance of a sale; (2) Witnesses who devote their full time to their missionary work receive expense money.[37] *Con:* (1) The admitted non-profit nature of the transaction; (2) The undisputed fact that the articles involved were religious and a means of evangelizing; (3) The distributors are professed ministers of their religion and do not profit personally; (4) The funds collected are devoted to the support of the religious movement; (5) The probable fact that the purchaser views his payment of money as nothing more than a contribution.

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[35] *Age Herald*, Birmingham, Ala., June 11, 1942; *Courier*, Evansville, Ind., June 11, 1942; *Free Press*, Burlington, Vt., June 10, 1942; *Journal-Transcript*, Peoria, Ill., June 11, 1942; *Times-Dispatch*, Richmond, Va., June 12, 1942; *Herald*, Hutchinson, Kan., June 11, 1942; *News and Courier*, Charleston, S. C., June 12, 1942; *Virginian-Pilot*, Norfolk, Va., June 12, 1942; *Enterprise*, Beaumont, Tex., July 5, 1942; *Journal-Times*, Racine, Wis., June 11, 1942; *Times-Herald*, Washington, D. C., June 12, 1942; *State Gazette*, Trenton, N. J., June 11, 1942; *Tribune*, Lewiston, Ida., June 11, 1942; *Democrat*, Johnstown, Pa., June 15, 1942; *Post-Dispatch*, St. Louis, Mo., June 12, 1942; *Journal of Commerce*, Chicago, Ill., June 15, 1942; *Dispatch*, Roswell, N. Mex., June 11, 1942. And see the editorials in *Newsweek*, June 29, 1942, Vol. 19, No. 26, p. 68, and *Time*, June 22, 1942, Vol. 39, No. 25, pp. 55, 56.

[36] *Herald-News*, Passaic, N. J., June 11, 1942. Admittedly, this footnote and footnote 29 represent the sampling method. But observe that on the basis of these samples the ratio is 19 to 1.

If this is an honest tabulation, the religious character of the transaction is supported by the numerically preponderant facts. The weight to be assigned to each fact is conjectural, but no part of the money transaction can be divorced from its religious aspect. The distribution of the literature is an exercise of religion, just as is a Sunday sermon. The money received goes to the support of that exercise. By the exaction of a tax, that exercise of religion is burdened, and to the extent that it is, the freedom of religion defined in the First Amendment and protected by the Fourteenth Amendment is inescapably abridged.

The conclusion is that the majority of the Court drew a line between commercial and religious transactions, but did not make sufficiently clear the basis for drawing it. There seems to be reason for arguing that the line should not have been drawn in favor of the commercial taxable aspect when the transaction was fundamentally dissemination of religious beliefs, the distributor being a minister or evangelist without personal gain, and when the money received is directly sustaining of the means of religious expression. Were the distributor or salesman to peddle primarily for personal profit, he might well be taxed for the privilege of distributing even religious tracts. Again, if the articles sold were not religious treatises, though sold for the profit of a religious organization, a tax on the seller would not appear to abridge any exercise of religion. In each such instance, the profit motive, or the non-religious nature of the articles dispensed, would divorce the religious from the commercial aspect of the otherwise equivocal "sales."

Admittedly, the balancing of the conflicting religious and social interests in both the flag salute case and the license tax cases is a delicate and difficult problem. The foregoing discussion has attempted to attack this problem in the light of the nation-wide picture which has been peculiarly available to the writers through the files of the Department of Justice. Should these issues again be presented to the Supreme Court, as it seems inevitable they will be, it is hoped that the reflections here expressed will be thrown in the balance.[38]

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[37] Cf. Opinion No. 14, Vol. III, National Headquarters Selective Service System.

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[38] A motion has been made for a rehearing of Jones v. Opelika, etc., decided June 8, 1942. A petition for *certiorari* has been filed in the Supreme Court in a somewhat similar license tax case arising in the District of Columbia, Busey v. Dist. of Columbia, decided April 15, 1942, in the U. S. Court of Appeals for the District of Columbia.

On October 6, 1942, a three-judge court sitting in the District Court of the United States for the Southern District of West Virginia in the case of Walter Barnette *et al.* v. West Virginia State Board of Education granted an injunction against the State Board prohibiting enforcement of the flag salute requirement in the public schools of West Virginia in cases where school children have religious scruples against participating in the salute. The court felt that the authority of the Gobitis case had been so impaired by the change of heart of three members of the Supreme Court who had joined in the majority opinion that it was no longer a binding precedent. An order permitting the defendant, State Board, to appeal was entered by District Judge Ben Moore October 30, 1942.

The Federal Revenue Act of 1942.[1] The Revenue Act of 1942 marks a new high in American finance; in fact, it reaches a new high for any country. According to official estimates, which vary somewhat, in a full year of operation the new law will increase federal tax revenues by 7 or 8 billion dollars to 24 or 26 billion dollars. This is about 50 per cent more than would have been received if the existing law had not been changed, and four times as much as the greatest tax measure of World War I. Eight-elevenths of the estimated increase is to come from income taxes on individuals; two-elevenths from taxes on incomes of corporations; and nearly one-eleventh from excises on liquor, tobacco, freight charges, etc. (See Table 4).

The great problem of war finance that was, and still is, before the government is to raise the huge amounts necessary without the excessive borrowing and inflation that usually impede the conduct of war, and which also have a large part in causing and aggravating the extremely serious and prolonged depressions that practically always follow major wars. Adequate and wise financing is necessary to win the war surely and promptly, and thus to minimize the great destruction of life and resources during the conflict and afterwards. After outlining briefly estimates of our war needs and plans for meeting them, we shall give a brief summary of the main provisions of the new revenue act and then a few explanations, comments, and suggestions relative to future developments.

I. THE FISCAL SITUATION—NEEDS AND PLANS

The Pearl Harbor disaster quickened the tempo of war preparation, including plans for financing. In his January, 1940, budget message, the first after the beginning of the holocaust in Europe, President Roosevelt asked for less than 2 billion dollars for national defense; in his message of January, 1941, after the fall of France and most of the Western European countries, he outlined defense expenditures of $6.4 billion for 1941 and $10.8 billion for 1942. But in January, 1942, only thirty days after the Pearl Harbor disaster which had galvanized and unified American public opinion, he called for $50 billion to $60 billion (or more than half of the expected national income)[2] to prosecute the war during the next year. October 16, 1942, he said that $76 billion, or three-fifths of the increasing national production (or national income), would be necessary to carry on the war in 1943. Estimates of changes in federal expenditure are shown in Table 1.

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[1] Those not familiar with the previous course of United States war tax legislation, and particularly with the income and excess profits taxes, might get a better background for the present discussion from "The Revenue Act of 1941," *American Economic Review*, Vol. 31, pp. 809–822 (Dec., 1941), and *The Federal Income Tax* (New York, 1940), by the present authors.

In preparing this article, the authors received valuable data and assistance from the U. S. Treasury Department staff, the Congressional committees, British and Canadian officials, Dr. Fred W. Morrison, the Graduate School of the University of Minnesota, and others, for all of which they wish to express their appreciation.

TABLE 1.—FEDERAL EXPENDITURES 1932, 1939, AND ESTIMATE FOR 1943[a]
(In millions, for fiscal years)

Activity	*1932*	*1939*	*1943*
War (not including interest)	$ 797	$1,251	$74,000
Interest on the public debt	599	940	1,850
Non-War			
Public Works, Social Security[b]	2,431	5,829	3,360
Administrative departments[c]	707	687	834
TOTAL	$4,534	$8,707	$80,044

[a] Report of the Bureau of the Budget, October 16, 1942, summarized from report in *New York Times*, Oct. 17, 1942.

[b] Includes AAA program, unemployment relief, pensions, etc.

[c] Includes independent offices, legislative establishments, judicial establishments, District of Columbia (U. S. share), Departments of Agriculture, Commerce, Interior, Justice, Labor, State, Treasury, War (Non-Military), and Post Office deficiency.

Secretary of the Treasury Morgenthau, long anxious to avoid excessive borrowing and inflation, had been very insistent, ever since our involvement began to appear imminent, that our war funds should be raised mostly by taxes—not one-fourth by taxes and three-fourths by borrowing as in World War I, but two-thirds by taxing and only one-third by borrowing. Furthermore, he has urged that as much as possible of the borrowing be of a non-inflationary character, that is, from individuals who would pay for their bonds out of current earnings and savings rather than from commercial banks, which pay for bonds, not with money already in circulation, but by making book entries of deposits to the credit of the government. In January, 1942, however, the Secretary of the Treasury realized that the tremendous budget then proposed by the President could not be raised without much larger loans than he had been advocating.

[2]

	1915	*1920*	*1929*	*1933*	*1939*	*1940*	*1941*	*1942*	*1943*
Cost of living	74	138.3	122.8	93.9	99.6	100.7	110.5	116.9	
National Income	$——	$——	$ 83.3	$39.9	$70.7	$ 76.0	$ 94.7	$114	$120
Public debt	0.9	24.1	16.6	22.2	39.8	42.3	48.4	76.5	

Bureau of Labor Statistics cost of living index, expressed in percentages, is for December of each year, except for July in 1942; the increase from March, 1941, to July, 1942, was 15.5 per cent. National income estimates are in billions of dollars for calendar years. Interest-bearing public debt, in billions of dollars, is as of June 30; the amount for Oct. 17, 1942, was $89.2 billion.

Public hearings on the new revenue bill were started in the House of Representatives by the Committee on Ways and Means on March 3, 1942. The Secretary of the Treasury requested Congress to provide for new taxes to yield revenue of $7.6 billion more than provided by existing legislation. His recommendations were that rates of the individual income tax be increased to yield $3.2 billion additional and that varying percentages (up to 10 per cent) of surtaxes be collected currently at the source. At that time, he did not advise lowering individual exemptions. Before the House of Representatives passed the measure, however, he came to the conclusion that the income tax base should be broadened in this manner. He proposed increasing corporate excess profits taxes, but not corporate normal and surtaxes; increasing estate and gift taxes, and excises (even doubling the federal gasoline tax); and removing certain inequities and privileges in the law.

After several months of work on the bill, on July 14, 1942, the Ways and Means Committee reported it to the House, which passed it on July 20. The Senate Committee on Finance had the House measure under consideration until October 2, when it reported it to the Senate with 504 amendments, some of them minor, some very important. The Administration was greatly dissatisfied with the House measure because it did not provide the funds which the Treasury had said in March were necessary (not to mention subsequent increases in estimates of needs), because it did nothing about the "inequities" and "privileges" and, also, because it provided for a 5 per cent tax on freight that was considered inflationary, as this would doubtless increase the cost of goods and services generally. The Senate measure was somewhat more acceptable from this point of view, although Treasury estimates of the yield of the Senate bill were less than those of the Senate Finance Committee.

II. SUMMARY OF MAIN PROVISIONS OF THE NEW LAW

(1) *Individual Income Tax.* Among the most important changes in the income tax law are the reductions in the individual exemptions allowed. Henceforth many more taxpayers will file returns and other income taxpayers will pay higher rates on larger amounts. Exemptions were lowered from $1,500 to $1,200 for a married person or head of a household; from $750 to $500 for a single person; and from $400 to $350 for a dependent.

Two provisions grant some slight relief to certain classes: (1) soldiers and sailors in active service at the end of the taxable year may exclude from gross income $250 if single, and $300 if married; (2) any taxpayer may deduct medical expenses if they amount to more than 5 per cent of his net income, but the maximum deduction allowable is $2,500 in case of a husband and wife or head of a family, and $1,250 in case of all other individuals.

Rates of tax are increased on all brackets of income. The normal or flat tax was raised from the 4 per cent of the 1941 law to 6 per cent; the first surtax rate, from 6 per cent to 13 per cent. As the surtax applies to the first dollar of taxable income, the lowest rate on taxable net income is 13 per cent, and, where the normal tax is applicable, as it is in most cases, the sum of the normal and surtax rates is 19 per cent or more; and, in addition to this, the "Victory" tax of 5 per cent will apply to "Victory tax net income" in excess of $624 a year, beginning with income of 1943. Under the previous law, the maximum income surtax rate of 77 per cent applied to income in excess of $5,000,000; under the Act of 1942, the maximum surtax rate of 82 per cent applies to income over $200,000. Tax liabilities on representative incomes are shown in Table 2.

TABLE 2.—TAX LIABILITIES OF CERTAIN CLASSES OF CITIZENS UNDER PREVIOUS LAW AND UNDER ACT OF 1942[a]

	Act of 1941	*Act of 1942*			
Gross Income	*Income Tax*	*Income Tax*	*Victory Tax*	*Post War Credit*	*Total Net Tax*
Single Person:					
$ 600	—	$ 5.20	—	—	—
1,000	$ 11.40	70.60	$ 18.80	$ 4.70	$ 84.70
1,500	54.60	153.40	43.80	10.95	186.25
2,000	97.80	236.20	68.80	17.20	287.80
2,500	141.00	319.00	93.80	23.45	389.35
3,000	184.20	407.80	118.80	29.70	496.90
5,000	409.50	793.00	218.80	54.70	957.10
10,000	1,246.50	2,056.00	468.80	117.20	2,407.60
100,000	46,421.50	56,351.00	4,968.80	500.00	60,819.80
1,000,000	655,139.00	766,616.00	43,384.00	500.00	809,995.00
5,000,000	3,523,124.00	3,934,616.00	115,384.00	500.00	4,049,995.00
Married Person—No Dependents:					
600	—	—	—	—	—
1,000	—	—	$ 18.80	$ 7.52	$ 11.28
1,500	—	$ 20.40	43.80	17.52	46.88
2,000	$ 22.80	103.20	68.80	27.52	144.48
2,500	66.00	186.00	93.80	37.52	242.28
3,000	109.20	268.80	118.80	47.52	340.08
5,000	312.00	639.00	218.80	87.52	770.28
10,000	1,079.00	1,826.00	468.80	187.52	2,107.28
100,000	45,919.00	55,784.00	4,968.80	1,000.00	59,782.80
1,000,000	654,554.00	766,000.00	44,000.00	1,000.00	809,000.00
5,000,000	3,522,524.00	3,934,000.00	116,000.00	1,000.00	4,049,000.00

[a] This table is computed on the assumption that net income subject to regular income tax is 90 per cent of gross income, that is, that taxes, contributions, and other deductions average 10 per cent. Credit is taken for 10 per cent earned income. The victory tax is computed on income above $624 and is offset by the amount of credits or refunds shown in credit column. Victory tax on the two highest brackets is adjusted to comply with 90 per cent tax limit.

Provision is made for continuation of the simplified return[3] for those having a gross income of $3,000 or less from salaries, wages, dividends, interest, or annuities. This type of return was first authorized in 1941, and has proved of value in simplifying administration for both the taxpayer and the government. The 1942 law restricts somewhat the use of this simplified form. In the previous law, it could be used also for income from rents and royalties.[4]

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[3] This form contains a table showing the tax liability on each income up to $3,000 so that a taxpayer need not make complicated computations, but may see his tax liability at a glance. In general, it allows about 6 per cent for deductions.

A radical new departure in the 1942 law is the so-called Victory tax, which starts in a small way the collection-at-the-source feature combined with the compulsory savings plan—features that have been developed somewhat further and somewhat differently in Great Britain and Canada. This tax is 5 per cent of that part of a taxpayer's net annual income, except capital gains and interest on federal obligations, which is in excess of $624; it is in addition to regular income taxes mentioned above. Credits are allowed currently for debt reduction, insurance premium payments, and bond purchases; but such credits may not exceed the limits set for post-war credits. These alternative post-war rebates or credits are 25 per cent of the Victory tax, or $500, whichever is less, for a single person; and 40 per cent of the tax, or $1,000, for a married person or head of a family, plus 2 per cent or $100 for each dependent. These post-war credits are allowable, however, only to the extent that the current tax credits have not exhausted them. Victory and ordinary income taxes combined are not to exceed 90 per cent of net income.

The new law again changes the treatment of capital gains and losses. Prior to 1921, gains and losses from sales of taxpayer's capital assets were treated as ordinary income or loss in computing the income tax. Since then, various differentiations between capital gains and ordinary income have been made from time to time. The Revenue Act of 1939 established three categories and provided that different proportions of profits from sales should be taxed differently, depending upon the length of time assets were held. This plan has been followed in the Act of 1942, but the basic holding periods have been changed. Under the new measure, 100 per cent of profits from sales of securities held for less than six months, and 50 per cent of profits from sales of those held more than six months, must be included for income tax purposes. The amount of deductible capital loss is limited to the extent of the capital gains plus net income, or $1,000, whichever is less; but taxpayers may carry over for five succeeding years any excess of losses over gains.

(2) *Corporation Income, Surtax and Excess Profits Taxes.* Changes in corporation tax rates are shown in Table 3. It should be noted that all corporations are allowed an excess profits tax exemption of $5,000, and

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[4] Other restrictions also were imposed. For example, it cannot be used by a nonresident alien, by an individual filing for less than a twelve-month period, or by a married person whose spouse files a return and computes a tax without regard to this small return.

TABLE 3.—CORPORATION TAXES[a]

I—INCOME TAX:		
(*a*) *Normal Tax:*	*1942 rates*	*1941 rates*
1—Net of $25,000 and under; first $5,000	15%	15%
$5,000 to $20,000	17	17
$20,000 to $25,000	19	19
2—Net over $25,000; flat rate	24	24
(*b*) *Surtax:*		
On $25,000 net and less	10	—
If net is over $25,000	16	—
First $25,000 net	—	6
On remaining net	—	7
II—EXCESS PROFITS TAX:		
(*a*) *Exemptions:*		
1—Invested capital method:		
Flat exemption for all companies	$5,000	$5,000
On first $5 million of capital	8%	8%
On next $5 million of capital	7	7
On next $190 million of capital	6	7
On the remainder of capital	5	7
2—Average earnings method:		
Flat exemption for all companies	$5,000	$5,000
Plus credit on 1936–39 average	95%	95%
(*b*) *Rates:*		
On all excess profits	90	—
On the first $20,000	—	35
On next $30,000	—	40
On next $50,000	—	45
On next $150,000	—	50
On next $250,000	—	55
All over $500,000	—	60

[a] From George B. Bryant, Jr., "The New Tax Law," *Barron's*, Oct. 26, 1942.

that there is a tax limitation of 80 per cent of surtax net income, after refunds. Reduction of the percentages of invested capital credit for larger corporations exercising this option will result in higher taxes on numerous corporations with large capitalization. For corporations using the pre-war average-earnings base, some relief is provided. For example, corporations using the average-earnings method of computing excess profits taxes may substitute 75 per cent of the average earnings of the best three years in the base period 1936 to 1939 for the worst year in this period if the worst year's earnings were less than 75 per cent of the average of the other three years.

Much discussion was aroused by the controversy over whether excess profits from war contracts should be recouped by the use of the excess profits tax or by renegotiation of contracts, or by both. Both methods have serious weaknesses and are liable to great abuses. Under previous laws, renegotiations might occur as late as three years after the war. The 1942 law limits such action to one renegotiation except in cases of fraud, and to the period within one year after the close of the fiscal year within which the contract is completed.

The Senate conferees insisted on retaining the corporation capital stock tax and the declared-value excess profits tax, both of which the House had proposed to repeal; but corporations are exempt from the declared-value excess profits tax if their profits do not exceed 10 per cent of the declared value. If the profits do exceed this percentage, they are subject to a tax of 6.6 per cent on the amount over 10 per cent and not over 15 per cent of declared value, and to a tax of 13.2 per cent if profits are over 15 per cent. The Act of 1942 allows corporations to make declarations of "declared value" annually.

(3) *Estate, Gift, and Excise Taxes.* The new law does not revise the rates of estate or gift taxes, but it changes the $40,000 exemption plus the $40,000 life insurance credit of the previous law to a maximum exemption of $60,000 for either or both combined.

Examples of increases in the more important excises are: from $4 to $6 per gallon on distilled spirits; from $6 to $7 per barrel on malt liquors; from $7.80 to $8.40 per thousand on cigarettes. Freight and express charges are taxed 3 per cent, but the transportation of coal is taxed 4 cents a ton. Taxes on telephone and telegraph services are increased; the rates vary, but generally the subscriber's telephone bills will be taxed 10 per cent and toll charges in excess of 24 cents will be taxed 20 per cent.

(4) *Effective Dates.* The President signed the Act October 21, 1942, thus permitting taxes on excises to go into effect November 1. Amendments to the individual and corporation income tax are applicable generally to taxable years beginning after December 31, 1941. Changes in the estate tax are applicable to estates of those who die after the date of enactment of the law; but the gift tax amendments are effective with respect to gifts made in 1943 and succeeding calendar years. The Victory tax is applicable to income of 1943 and subsequent calendar years.

III. COMMENTS

The new tax law continues not only the trend of levying higher and higher taxes, but also the trend of doing this in more and more complicated language. Involved sentences, phrases, and clauses, and endless cross references to other sections of this law and also to various sections of the Code, are very trying to inexpert readers and taxpayers who try to decipher the law; but they should furnish unlimited and unending employment to lawyers, accountants, and courts. It is doubtless true, as one drafter said, that a tax law of this magnitude cannot be both simple and

TABLE 4.—ESTIMATES OF REVENUE YIELDS UNDER FEDERAL REVENUE ACTS AS AMENDED BY THE ACT OF 1942
(In millions of dollars)

	Estimated Yield 1941 law[a]	*Estimated Additional Yield 1942 law*[b]	*Total*
Income tax			
Corporation			
Income tax (current)	$ 3,941.9	$ 8.1	$ 3,950.0
Excess profits	3,597.7	1,901.0	5,498.7
Declared value excess profits	107.5	−58.5	49.0
Less post-war credit	—	−549.9	−549.9
Total Corporation (net)	$ 7,647.1	$1,300.7	$ 8,947.8
Individual			
Income	5,044.8	3,010.7	8,055.5
Victory (gross)	—	3,087.6	3,087.6
Less post-war credit	—	−1,132.3	−1,132.3
Victory (net)	—	1,955.3	1,955.3
Total Individual (net)	$ 5,044.8	$4,966.0	$10,010.8
Back taxes	404.0	—	404.0
Total income and profits	13,095.9	6,266.7	19,362.6
Miscellaneous internal revenue			
Capital stock tax	290	−51.5	238.5
Estate and gift taxes	530.7	13.0	543.7
Liquor taxes	1,169.1	319.8	1,488.9
Tobacco taxes	838.9	62.0	900.9
Manufacturers excise	407.9	9.3	417.2
Retailers excise	128.3	—	128.3
Miscellaneous excises	572.3	262.5	834.8
Total Miscellaneous	3,937.3	615.1	4,552.4
Total	$17,033.2	$6,881.8	$23,915.0

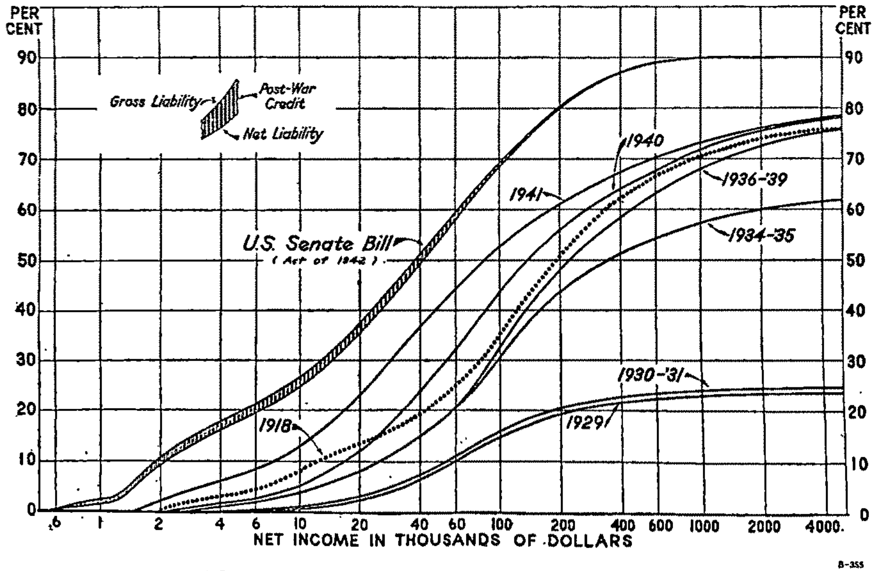
[a] Seventy-seventh Cong., 2nd Sess., *Hearings before Senate Finance Committee on HR 7378*, 1:60.

[b] Treas. Dept., Div. of Research and Statistics, Oct. 17, 1942.

equitable, and it may be that the public should grin and bear the complications for the sake of the equity achieved. Yet it would appear that something practical could be done to lessen the ever-growing complexity.

The impact of this tremendous war tax burden will be reflected in lowered standards of living for many. It will have serious repercussions also on the states, whose fiscal difficulties are already serious because of the severe financial strains on state taxpayers occasioned by the extraordinary federal taxes and the disruption of business caused by the war, as well as because of reduced receipts from gasoline taxes, motor vehicle registration fees, and other important sources of state and local revenues. But if the hardships are necessary to win the war and the taxes are the best and most practical available, American citizens will probably not protest overmuch.

FIGURE 1. INDIVIDUAL INCOME TAX UNDER ACTS OF 1942 AND SELECTED EARLIER ACTS.
Effective Rates for Married Person without Dependents.



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(1) *Individual Rates and Exemptions.* Rates and exemptions have been summarized above, and "effective rates"[5] on individual income in the Act of 1942 are compared with those of previous federal revenue acts, and also with current rates of Canada and the United Kingdom, in Figures 1 and 2. By calling such a large percentage of the rate increases "surtaxes," the

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[5] See Table 2. The "effective" rate on any individual's net income is the percentage arrived at by dividing total tax liability by total net income before subtracting exemptions and credits from net income. The term "effective" rate, in contrast to the bracket rates, has been used more and more by the Treasury Department and the government agencies in recent years, probably partly because it is more "realistic" in some respects and partly because it does not stress the high maximum rates. That is, these high new taxes would appear still higher to most laymen if the bracket rates were referred to as much as formerly, the tendency of taxpayers being to focus attention on maximum bracket rates.

government is circumventing the earlier legal provisions which prevented the imposition of "normal" taxes on the interest from certain government securities. This affects mostly the large holders of such bonds, that is, banks, insurance companies, trust funds, and owners of equities therein. Such taxpayers, as well as state and local governments, would have been affected still more if the tax exemption of state and local government securities had been abolished as recommended and urged by the Administration.

The lowered individual exemptions not only increase the number of taxpayers subject to the income tax, but they also push more of the income of former and larger taxpayers into the higher brackets. That is, they will increase revenue receipts from the larger taxpayers by much larger amounts than from the greater number of new small taxpayers, to say nothing of the burden and expense that will be put upon the Bureau of Internal Revenue in collecting small amounts from millions of newcomers.[6] But this broadening of the base is an experiment worth trying in spite of its disadvantages, particularly if a larger measure of current collection at the source is adopted in order to reduce tax delinquency and also to prevent or lessen inflation. After a few years of experience, we shall have more of a basis for deciding whether the new provisions should be continued, amended, or repealed.

The "Victory" tax is a modified net income tax, but with a general specific exemption to ease the burden, particularly on the poor, and with credits designed to encourage all generally non-inflationary expenditures. This tax will serve also parts of the purposes of those urging: (1) current collection to prevent inflation and tax delinquency, (2) collection of a larger proportion of small incomes which have been increased more or less because of the war and which, in their totality, include a large part of the increased national income that is most likely to be spent for commodities in which inflation may prove most serious.

(2) *Corporation Taxes.* The corporation taxes under the new law are higher than ever, but much lower than those advocated by the Treasury

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[6] INCOME TAX RETURNS FILED IN CALENDAR YEARS FOR INCOME OF PRIOR YEAR[a]

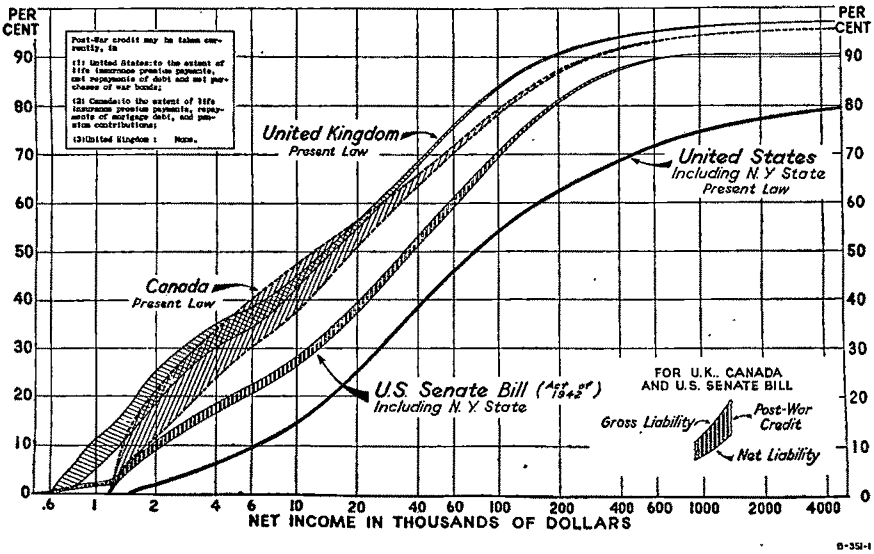
	1940	*1941*	*1942*	*1943 est.*	*1944 est.*
Total filed....	7,715,660	14,778,159	26,369,044[b]	35,000,000	45,800,000
Non-taxable..	3,673,902	7,273,464	8,488,395	8,000,000	3,000,000

[a] From press releases of the U. S. Treasury, Oct. 2, 22, 1942.

[b] Of these, 10,369,708 were filed on the special simplified optional return (Form 1040A) designed for those with incomes of $3,000 or less.

and appreciably lower than those in the bill passed by the House of Representatives. The Senate Finance Committee appeared especially concerned that taxes on business should be equitable and should not unnecessarily impede the war effort or kill the goose that lays the golden eggs. It gave special relief to bankrupt railroads, to the hard pressed utilities, and to corporations trading with countries of the Western Hemisphere. The post-war refunds and the over-all 80 per cent limitation mentioned above were designed not only to give relief, but also to check extravagance, graft, and inflation[7] caused by 100 per cent, or near-100 per cent taxes, and also to enable business to make desirable post-war adjustments, to give adequate employment to labor, and to prevent, or at least mitigate, post-war depressions. Some consider that the Senate was altogether too tender with business, especially with corporations known or thought to be prospering.

FIGURE. 2. INDIVIDUAL INCOME TAX UNITED STATES, UNITED KINGDOM, AND CANADA. Effective Rates for Married Person without Dependents.



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(3) *Comparisons with British and Canadian Taxes.* It has been pointed

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[7] Cost-plus war contracts appear to be even worse incentives to these abuses than high excess profits taxes. An eminent British economist now in his government's service has stated that Great Britain would reduce waste, increase production, and speed up the war effort greatly by reducing her excess profits tax from 100 per cent to 60 per cent; even 80 per cent is too high, he says, in view of war hazards and disruptions.

out repeatedly that although our taxes are burdensome, they are less so than British and Canadian taxes. This is doubtless true in general, but accurate comparisons are difficult to make because incomes and other economic factors, as well as definitions and other provisions of the several tax laws, are so different. A few examples will indicate why comparisons are likely to be misleading. Great Britain has one less layer of government than the United States; and property taxes are much less important there than here. Corporations as such are not subject to the ordinary income tax, but pay such taxes for their stockholders, who are not again subject to this tax when dividends are distributed to them. Thus the British do not discriminate between corporations and partnerships (and individuals) as do our lawmakers.[8] For the most part, capital gains are not subject to the ordinary British income tax. Excess profits tax provisions are different, but not so different perhaps since the enactment of our new revenue act. National income and average individual income are larger in the United States than in Great Britain. It is obvious that these and many other differences are likely to make most lay comparisons rather misleading, but it seems safe to say that the Canadians and British are bearing rather heavy tax burdens.

(4) *Proposals Not Adopted.* The rejection of some proposals probably throws as much light on present and future tax policy as does the approval of some features already discussed. The Treasury's proposal for a compulsory joint return by husband and wife was again strongly opposed by the representatives of the community-property states and some others. Though rejected by Congress, the President's proposal to put an upper limit of $25,000, after tax, on all salaries has since been decreed under his extraordinary war powers. The Secretary of the Treasury apparently thought it futile to press very hard this time for elimination of the prewar average earnings credit option for excess profits taxes. Nor was he successful in securing repeal of the extraordinary depletion allowances granted mining companies, or in persuading Congress to eliminate the tax exemption long accorded interest from state and local government securities.

The Senate Finance Committee turned down the Treasury's spendings tax proposal[9] promptly and almost bluntly, although compulsory-loan and collection-at-the-source features entered the tax tent by the camel's-nose method in the form of the "Victory" tax. On the other hand, the general sales tax, which lurked in the background, and which numerous congressmen, senators, business men, and others want, but which the Administration has long opposed, was not given formal consideration on the floor of either house.

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[8] But numerous large-income stockholders in the United States, some of them corporation directors, have avoided high surtaxes on individual incomes when corporations have failed to distribute earnings in dividends to stockholders. This practice is encouraged by disparity of rates on corporations and individuals.

[9] In essentials, the spendings tax as advocated by the Treasury was very similar to the "Victory" tax, but quantitatively much larger. It was really not greatly different in general effects from an income tax except that it exempted savings (non-inflationary). The tax was in two parts: (1) a 10 per cent tax to be repaid later, based on spending in excess of $2,000; (2) a non-returnable tax graduated from 10

IV. CONCLUSION

In conclusion, it may be asked: Does the Revenue Act of 1942 meet the tax requirements of the situation which faces the United States? Probably as nearly so as Congress thought was economically and politically feasible; and Congressmen thought they were in a very tight place just before the elections. But with $75 or $80 billion of expenditures for war this year, and only $24 or $26 billion of taxes and $12 billion or less of non-inflationary borrowing from savings (voluntary purchase of war bonds), there is still left over $40 billion to be borrowed—probably mostly from commercial banks—the most inflationary of all important sources of war finance. With more wage receipts and other purchasing power in the hands of the public than ever before, and with supplies of civilian goods decreasing, the danger of bidding up prices is very grave. With the government throwing $40, or even $30, billion more into circulation by causing the banks to pay for bonds with book entry deposits, the pressure toward inflation becomes tremendous, and it is a question how successfully the tide can be held back by priorities, rationing, wage and price controls, and the other forms of regulation that have been started—we hope not entirely too late and too little.

At this writing, it appears that the Administration is likely to call upon Congress to begin anew the annual struggle over taxes soon after the President presents his annual budget message in January. It appears that one of the struggles will be over a general sales tax versus a spendings tax, with the odds in favor of the former despite the solid merits (and serious administrative difficulties) of the latter. Compulsory loans and collection-at-the-source features should, and probably will, be pushed farther next year, and some of the income tax rates will probably be raised again if war needs continue to grow, as they likely will until the war ends.[10]

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per cent on spending in excess of $2,000 up to 75 per cent on that in excess of $10,000. This highly progressive second part of the Treasury's spending tax was perhaps its most distinctive and controversial feature. It is not a necessary part of a spendings tax, but it is what differentiates the Treasury's proposed spendings tax most distinctly and vitally from the Victory tax of the Act of 1942 and also from most sales tax proposals. It is therefore the crucial issue in controversy between opposing proponents of sales and spendings taxes.

[10] While this article was in press it was reported from Washington that the chairmen of the Senate Finance and the House Ways and Means Committees have stated that taxes on incomes of individuals and corporations are already so high that they

Most of us probably flinch at much heavier taxation. But we may rest assured that the government can and will secure enough purchasing power to finance the war—that is, to purchase the supplies, equip the armed forces, and secure all the other physical means available to win the war. If it can secure enough funds through taxes and non-inflationary loans out of savings, we may avoid serious inflation. But whenever a government faces the danger of losing a major war, it does not stop at printing money or requiring the banks to do the equivalent, if this is necessary to get the war supplies it must have. It is not a question of whether or not we shall pay for the war, but whether the war and the peace are likely to be more successful, and whether the costs of both are likely to be distributed more satisfactorily, if we finance the war by one method or by another. History indicates the answer, though we have the chance to make future history better than the past if we are sufficiently wise and willing, and have not waited until too late.

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The Case of the Nazi Saboteurs. At four o'clock on the morning of June 13, 1942, four men, in the fatigue uniforms of the German Marine Infantry, were landed in a rubber boat by two German sailors on the beach at Amagansett near the tip of Long Island, 125 miles east of New York City. They changed to civilian dress and then buried in the sand their uniforms and a supply of explosives, incendiaries, fuses, detonators, timing devices, and acids. They carried with them some $90,000 in American currency and had an elaborate list of American factories, railroad centers, bridges, power plants, water supply systems, and the like. They were accosted by an unarmed Coast Guard patrol. Alleging that they were fishermen, the four men sought the silence of the patrol first by threats to kill him and then by a bribe. He accepted $260, promptly reported the incident, and a squad of Coast Guardsmen shortly discovered the buried articles. A submarine was seen and heard off shore. The four men went to New York City.

On June 17, four other men landed under similar circumstances at Ponte Vedra Beach, near Jacksonville, Florida. They also buried explosives, incendiaries, fuses, and timing devices. They proceeded without discovery to Jacksonville, and from there some went to Chicago.

On June 27, Mr. J. Edgar Hoover announced the arrest in New York

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should not be raised again in 1943, and that probably other taxes and compulsory loans will have to be considered. It was suggested also that the "Ruml plan" (or something like it) for skipping or postponing federal taxes on 1942 incomes and higher "pay-as-you-earn" taxes on incomes of 1943 and later years will probably be considered.

and Chicago of the eight men, all in civilian clothing, and their detention by the F.B.I. This was the first news of the affair.

All of the eight men were born in Germany, all had lived for some time in the United States, and all had returned to Germany between 1933 and 1941. In age, they ranged from twenty-two to thirty-nine. Six (Quirin, Neubauer, Heinck, Thiel, Kerling, Dasch) were German citizens. Burger had been naturalized in the United States, but had forfeited his American citizenship by induction into the German Army in 1941. Haupt claimed American citizenship based on the naturalization of his parents when he was five years old. He denied any acts or conduct which would forfeit his American citizenship.

The eight men admitted that they had been trained in a special school for sabotage near Berlin to effect the destruction of factories, power plants, railway and communication systems, bridges, and other key war facilities. They were trained to use secret writing in order to communicate with Germany and with each other. They had instructions from an officer of the German High Command to destroy war industries and facilities in this country. They, or in some cases their families in Germany, were to be paid a salary for their services. From the two groups the F.B.I. recovered about $175,000—American currency which was to be used for expenses and for bribes. The men stated that they had been ordered to wear their German uniforms when landing. They were brought to this country in two groups by German submarines.

On July 2, President Roosevelt issued two proclamations. The first denied to enemies who enter the United States to commit sabotage, espionage, or other hostile acts any right of access to the courts of the United States, and directed that such persons be tried by military tribunals in accordance with the laws of war. The second created a Military Commission of eight Army officers, headed by Major General Frank R. McCoy, to try the eight saboteurs (mentioned by name), ordered the Attorney General and the Judge Advocate General to prosecute them, and designated Colonel Cassius M. Dowell and Colonel Kenneth Royall as counsel to defend them. The Commission was authorized to make its own rules, to receive evidence which would have "probative value to a reasonable man," to convict or sentence by a two-thirds vote, and to transmit its findings to the President for final action.

The prisoners were turned over to the military authorities by the Attorney General and on July 3 the Government filed four charges against them. The first was a broad charge of violating the law of war by passing through our lines in civilian dress in order to commit sabotage, espionage, and other hostile acts; there were two charges of attempted "spying" and "relieving, corresponding with or aiding the enemy" under Articles of War 81 and 82; and a final charge of conspiracy to do all these things.

Trial before the Military Commission began on July 8 in the Department of Justice Building in Washington behind an impenetrable veil of secrecy. The proceeding was thirty-two hours old before any public knowledge of it was released, and General McCoy wished the entire trial to be completed without any publicity. Mr. Elmer Davis, newly created Director of the Office of War Information, made an issue of this and after a conference at the White House it was agreed that daily "communiqués" should be released to the press by General McCoy. These proved, however, pretty sterile. The entire record of the trial, containing as it does important military information, has been impounded for the duration of the war. At the outset, the defense counsel challenged the constitutionality of the President's Proclamation and the jurisdiction of the Military Commission, and stated that they waived no constitutional rights of the accused by proceeding. All of the defendants and numerous witnesses testified. Dasch and Burger aided the government, the former to such an extent that special counsel was appointed to look after his interests. The trial proceeded until July 27, when the defense rested its case.

The country was startled on July 27 by an announcement that the Supreme Court of the United States would meet in special session on July 29 to allow the submission of petitions for writs of *habeas corpus* in behalf of the prisoners. The ensuing proceedings proved as confusing on the procedural side as they were dramatic from other points of view. On July 28, defense counsel asked the District Court for the District of Columbia for leave to file petitions for *habeas corpus* in that court. These applications were denied that evening. When the Supreme Court met on July 29, two applications were made to it: first, for permission to file a petition for *habeas corpus* in the Supreme Court; second, a petition for *certiorari* to review the adverse order of the District Court of the preceding day. The first application called for an exercise of the Court's original jurisdiction; the second called for direct review on *certiorari* of the District Court's order, thereby by-passing the Circuit Court of Appeals for the District of Columbia. Lawyers and justices alike seemed doubtful about the Court's jurisdiction to proceed in either of these two ways. The Supreme Court finally allowed argument to proceed on the constitutional issues raised by the petition for *habeas corpus*, while defense counsel hurried to plug any gaps in the Court's jurisdiction by perfecting an appeal from the District Court to the Circuit Court of Appeals for the District and filing with the Supreme Court a petition for *certiorari* to the Circuit Court of Appeals before judgment. This was actually accomplished only a few minutes before the Supreme Court met on July 31 to announce its decision. By stipulation of counsel, the record, briefs, and arguments in the *habeas corpus* proceedings were treated as the record, briefs, and arguments upon the writs of *certiorari* to the Circuit Court of Appeals. Thus at the very last minute the Supreme Court granted *certiorari* to the Circuit Court of Appeals before that court had rendered judgment, decided on the merits that the orders of the District Court denying permission to petition for *habeas corpus* be affirmed, and denied the petitioners application for leave to file petitions for *habeas corpus* in the Supreme Court. The Court thus disposed of the case without deciding whether it has original jurisdiction to grant *habeas corpus.*

The proceedings in the Supreme Court occupied two days. Mr. Justice Murphy, on temporary leave in the Army, did not sit. The case involved only seven of the eight prisoners. Dasch, who had substantially aided the prosecution, did not join in the petition for *habeas corpus*. On July 31, the Court handed down through the Chief Justice a brief *per curiam* opinion. It stated in a few sentences that the accused were being tried on charges which the President could validly order tried before a military commission, that the Military Commission was lawfully constituted, and that no cause had been shown for discharge by *habeas corpus*. The orders of the District Court were affirmed and motions for leave to file petitions for *habeas corpus* were denied. The Chief Justice stated that a full opinion would be prepared "which necessarily will require a considerable period of time for its preparation and which, when prepared, will be filed with the Clerk." This opinion was filed on October 29, 1942, under the title *Ex parte* Quirin *et al.* As soon as the Court had handed down its decision on July 31 the Military Commission resumed its sessions: On August 3, it sent its verdict, together with the complete record, to the President. On August 8, the President announced that six of the prisoners had been electrocuted, one, Burger, sentenced to life imprisonment, and one, Dasch, sentenced to thirty years.

The Supreme Court's problem in this case was not complicated by any dispute over the facts. These facts, as set out above, were agreed upon by the government and defense counsel. The defendants did not deny them, but claimed that they had done these things without unlawful or hostile intent solely as a means of escaping from Germany. They emphasized that they had committed no unlawful overt acts and had perfected no plans. The truth or falsity of these statements obviously had nothing to do with the question of which authority, military or civil, was to try the prisoners. There were, in short, no disputed "jurisdictional" facts.

The twenty-two page opinion of Chief Justice Stone established three main points, thereby rejecting the three major contentions of the defendants. The first point established was that the Military Commission had jurisdiction to try the charges against the defendants. The supporting arguments fell into three divisions. (1) The President had power to establish the Commission. The Constitution grants war powers. It authorizes Congress to declare war and gives to the President, both as chief executive and as commander-in-chief full authority to wage the war which Congress declares and to execute all laws passed for the conduct of the armed forces. By the Articles of War, Congress explicitly provided for trial by military commissions of offenses against the law of war not customarily tried by courts martial. The law of war has been recognized and applied by American courts from the beginning. The President in this case has invoked the law of war as commander-in-chief. "By his order creating the present Commission he has undertaken to exercise the authority conferred upon him by Congress, and also such authority as the Constitution itself gives the commander-in-chief, to direct the performance of those functions which may constitutionally be performed by the military arm of the nation in time of war." But it is unnecessary to decide "to what extent the President as commander-in-chief has constitutional power to create military commissions without the support of Congressional legislation," since Congress has clearly authorized the trial of offenses against the law of war before such commissions. (2) The offenses charged against the defendants *are* offenses against the law of war. The law of war does not have to be codified in the form of statutes. Congress had its choice either of crystallizing "in permanent form and in minute detail every offense against the law of war" or of adopting the system of common law of war applied over many years by military tribunals. It chose the latter course. The law of war has always distinguished between armed forces and peaceful populations of belligerent nations, and between lawful and unlawful combatants. Lawful combatants are liable to capture and detention as prisoners of war. Unlawful combatants are also thus liable, but in addition are subject "to trial and punishment by military tribunals for acts which render their belligerency unlawful." These distinctions were recognized before the adoption of the Constitution and during the Mexican and Civil Wars. By the long-established practice of this government, "those who during time of war pass surreptitiously from enemy territory into our own, discarding their uniforms upon entry, for the commission of hostile acts involving destruction of life or property, have the status of unlawful combatants punishable as such by military commission." This is precisely what these defendants are charged with doing in the first charge brought against them. It is not necessary that the hostile acts should be committed against our armed forces. "Modern warfare is directed at the destruction of enemy war supplies and the implements for their production and transportation quite as much as at the armed forces." Nor does it make any difference that the prisoners *did* nothing. "The offense was complete when with that purpose they entered—or, having so entered, they remained upon—our territory in time of war without uniform or other appropriate means of identification." (3) The Commission had jurisdiction regardless of the alleged citizenship of any of the defendants. Offenses against the law of war are not the exclusive crimes of aliens. They may be committed by an American citizen. Special argument on behalf of Haupt was based on his American citizenship acquired at the age of five through the naturalization of his father. The fact of citizenship is held to be entirely irrelevant. The Court declared that a citizen could by his acts become an enemy belligerent, and that "citizenship does not relieve him from the consequences of a belligerency which is unlawful because in violation of the law of war."

The second main point established by the Court is that the constitutional guarantees of grand jury indictment and jury trial do not apply to the defendants' trial before a military tribunal for offenses against the law of war. The argument here is largely historical. Jury trial was no part of the procedure of a military tribunal at common law. The clauses of the Constitution requiring jury trial were not intended to make it such. These clauses were designed to protect trial by jury as then known and applied, not to apply it to new situations. The Court has steadily followed this principle, as is shown in the cases holding jury trial not necessary in the trial of petty offenses and criminal contempts because the common law had not required it in these cases. The Fifth Amendment, which guarantees grand jury indictment, expressly excepts from its operation "cases arising in the land or naval forces," and these cases are held to be excepted by implication from the jury trial guarantee of the Sixth Amendment. Defendants had argued that the specific exception from the grand jury and jury trial requirements of all "cases arising in the land and naval forces" meant that there could be no other exception. This view, said Chief Justice Stone, "misconceives both the scope of the Amendment and the purpose of the exception." "Cases arising in the land and naval forces" are cases involving offenses of whatever nature committed by our soldiers and sailors, offenses which, if committed by civilians would in most cases be triable by jury. These cases are tried by courts martial, not because of the nature of the offenses, but because of the membership in our armed forces of those who commit them. The exception has no bearing on the applicability or inapplicability of the jury trial requirement to offenses against the law of war. "We cannot say that Congress in preparing the Fifth and Sixth Amendments intended to extend trial by jury to the cases of aliens or citizen offenders against the law of war otherwise triable by military commission, while withholding it from members of our own armed forces charged with infractions of the Articles of War punishable by death."

The Court then turned to the Milligan case and disposed of in it thirty lines. The Milligan case had been the chief bulwark of the defense. Attorney General Biddle, in oral argument, had assured the Court: "You could decide this case without touching a hair of the Milligan case, but if it were not for the Milligan case, this case would not be here." He was undoubtedly correct. For seventy-five years, the Milligan case has been cited as protecting the right of the civilian to a jury trial in time of war except in the immediate theater of military action. It will be recalled that during the Civil War Milligan was charged with seditious and treasonable activities in Indiana where he lived, was arrested by the Union military authorities, and was tried for his crimes by a military commission set up for the purpose by President Lincoln without the sanction of any statute. He was convicted and sentenced to be hanged. He took his case to the Supreme Court in an attack upon the constitutionality of his trial. In 1866, the Supreme Court held that he had been unconstitutionally denied a jury trial in a civil court and set him free. Nine justices held that his trial before the military commission was invalid since the Congressional legislation then in force forbade a military trial of a civilian resident. "That body [Congress]" said Chief Justice Chase, "did not see fit to authorize trials by military commission, but by the strongest implication prohibited them." Five members of the Court, speaking through Mr. Justice Davis, went further and declared that Congress itself could not validly authorize the trial of civilian residents by military commissions except in the actual areas in which existing military operations had resulted in the closing of the civil courts. Four justices disagreed with this sweeping rule. The Government's position was that the doctrine of the Milligan case, properly construed, is inapplicable to the Nazi saboteurs, but that if it should be held applicable, then it ought to be overruled.

The Court followed the first and easier course and declared that "the Court's opinion [in the Milligan case] is inapplicable to the case presented by the present record." It mentioned the fact that Milligan was for twenty years a citizen and resident of Indiana, that he had never been a resident of a rebellious state, that he was not an enemy belligerent and had not had contact with armed enemy forces, and was for these reasons not subject to the law of war. It concluded: "We construe the Court's statement as to the inapplicability of the law of war to Milligan's case as having particular reference to the facts before it."

Having satisfied itself that the Government's first charge against the defendants alleging offenses against the law of war was "not merely colorable or without foundation," the Court declined to examine the other three charges.

The third point established by the Court was that the President's order setting up the Military Commission and determining its procedure was valid, and that the Commission itself had followed lawful procedure. The brief of defense counsel on this point had been long and detailed and had charged that the President's order violated specific articles of war enacted by Congress, and that the Commission's procedure had also violated statutory requirements. The Court did not consider these issues on their merits. Chief Justice Stone stated that the Court was unanimous in holding that no valid claim for *habeas corpus* could be based on the provisions of the Articles of War, but that the Court was evenly divided on the grounds for this decision. Four justices "are of opinion that Congress did not intend the Articles of War to govern a Presidential military commission convened for the determination of questions relating to admitted enemy invaders." The other four justices took the view that "the particular Articles in question, rightly construed, do not foreclose the procedure prescribed by the President or shown to have been employed by the Commission." In short, the Articles of War either did not govern the President in setting up the Commission, or, if they did govern him, he had not violated them. This concluded the Court's opinion.

The outcome of the case and the decision of the Supreme Court met with general approval. There was, however, some criticism of the Court for taking the case at all and for dealing so thoroughly with the constitutional issues raised. Even some of our liberals explained that while we ought, of course, to be scrupulous to administer impartial justice according to our traditional American rule of law, we ought not in the midst of a total war to waste time, money, and manpower by this ludicrous judicial ritual in the case of a group of enemy criminals who should have been shot at sunrise without more ado. I believe this view fails to take stock of several significant things about the Court's handling of the case and about the principles embodied in the opinion. These merit brief comment.

In the first place, the prisoners did get through to the Supreme Court and have their questions answered by that tribunal. That, in itself, is an important fact. The President's Proclamation had specifically denied the prisoners access to the civil courts. The position of the Attorney General was that the President could lawfully have ordered the prisoners shot as soon as they were arrested, that trial before the Military Commission was given as an act of grace and not of necessity, and that as belligerents the prisoners had no right of access to any Court. But when the special session of the Supreme Court opened, Chief Justice Stone asked Mr. Biddle: "Does the Attorney General challenge the jurisdiction of the Court?," and Mr. Biddle replied: "I do not." Chief Justice Stone touched on this general point in his opinion. He referred to the Government's contention that because they were enemy aliens, and because of the President's proclamation, no court could give the prisoners a hearing, and said: "But there is certainly nothing in the Proclamation to preclude access to the courts for determining its applicability to the particular case. And neither the Proclamation nor the fact that they are enemy aliens forecloses consideration by the courts of petitioners' contentions that the Constitution and laws of the United States constitutionally enacted forbid their trial by military commission." There is little in the history of this case to encourage unlawful belligerents arrested in this country to seek access to the civil courts. But what the Court did and held appears to boil down to this: the Court will look at the question of the detention of anybody under circumstances so unusual or suspicious as to raise the question whether he may possibly be entitled to a civil trial. It is an important protection to civil liberty that the Court, in its discretion, is willing to take this initial look. It may decide to look no further, or, as in this case, it may consider the prisoner's contention on its merits. It is important and gratifying that the Court actually took the case.

It is interesting, in the second place, that the facts essential to the jurisdiction of the Military Commission, according to the view announced by the Court, were not in dispute. There was no controversy over what the prisoners had actually done. The case, therefore, leaves more or less open the important question of how to proceed should these "jurisdictional" facts be disputed. Let us assume the arrest in the interior of the country of citizens or aliens charged by military authorities with acts of sabotage or other hostile acts, and the holding of these persons for trial by military commission in the face of their denial of misconduct and of confusing evidence as to what actually occurred. Here the jurisdiction of the Military Commission would appear to depend upon the truth of hotly disputed charges. Is the commission to be allowed to assume the existence of the facts necessary to its own jurisdiction? If so, there would appear to exist the possibility of the arbitrary denial of constitutional rights. While this problem did not arise in the case of the Nazi saboteurs, the Court's opinion contains one phrase which indicates that Chief Justice Stone was aware of the sticky problem which he was avoiding. In declaring that the Government's first charge against the prisoners stated an offense against the law of war, he went on to say: " . . . and the admitted facts affirmatively show that the charge is not merely colorable or without foundation." This may mean that in a case where jurisdiction is claimed for a military commission on the basis of disputed jurisdictional facts, the Court will insist that the Government produce something substantial and convincing to support its allegations. It would not be permitted to assert military jurisdiction groundlessly. This is a desirable outside restraint which might prevent the graver abuses resulting from possible arbitrary and irresponsible action by the military authorities.

A third point of interest was the Court's rather summary ruling that the citizenship of the defendant Haupt was irrelevant to the question of the jurisdiction of the Military Commission to try him. He was charged with violating the law of war, and that offense may be committed by a citizen as well as by an enemy alien. Nor is his claim of the right of jury trial strengthened by his citizenship. The civil rights guaranteed in the First

Ten Amendments and in other clauses of the Constitution are not reserved for American citizens alone, but extend to all persons subject to the jurisdiction of our government.

Finally, the Court's decision, so far from impeding the management of the war, dealt generously with the military authorities. The law of war was recognized and broadly interpreted. The Court showed no interest in the procedural technicalities embodied in the Articles of War enacted by Congress and alleged by defense counsel to govern the President in setting up the Military Commission. Half of the Court thought the technical requirements irrelevant, the other half thought they had not been violated anyway. There was no disposition to discuss them. Finally, the ghost of Lambkin P. Milligan was laid. The Court held, in substance, that the Milligan case is *sui generis*. It arouse out of facts not duplicated in the present case and not likely ever to be duplicated. Its doctrine is confined to those facts and has no relevance to the situation of prisoners whose status has nothing in common with the situation in which Milligan was placed. The case was not overruled; it was merely denied any general applicability outside its own unique facts.

What the case boils down to is this. The Supreme Court stopped the military authorities and required them, as it were, to show their credentials. When this had been done to the Court's satisfaction, they were allowed to proceed. This does not mean that in every case in which military justice is being administered the Court will insist on making a similar scrutiny. But it is a wholesome and desirable safeguard for civil liberty in time of war to have the Supreme Court reserve, and occasionally act upon, the right thus to examine the authority of the military in those cases in which, in the Court's judgment, the public interest and welfare will be served by so doing.

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Congress—Problem, Diagnosis, Proposals: Second Progress Report of the American Political Science Association's Committee on Congress.*

I. THE PROBLEM

The problem with which your Committee has been concerned since its appointment early in 1941 is the place of Congress in the American scheme of government under the emergency conditions of peace and war that have prevailed during the past decade. We have asked ourselves such questions as these:

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* The Committee on Congress was appointed in February, 1941, by President Frederic A. Ogg and reappointed, with one or two changes in personnel, a year later by President William Anderson. Its membership is as follows: Marshall E. Dimock, Washington, D. C.; Pendleton Herring, Harvard University; Meyer Jacobstein, Brookings Institution; Robert D. Leigh, Federal Communications Commission; Benjamin B. Wallace, U. S. Tariff Commission; Schuyler C. Wallace, Columbia University; George B. Galloway (*chairman*), Washington, D. C. The preliminary report presented herewith is as of the date June 30, 1942.

1. What changes have taken place in the relations between Congress and the Executive? Why? Has there been in fact any surrender of power and responsibility by Congress? If so, to what extent? How can an organic and continuous relationship between Congress and the Executive be established?
2. What are the wartime functions of Congress, and are they being effectively performed? How can Congress supervise the execution of delegated powers?
3. What relations exist today between Congress and the general public? And organized pressure groups? And the press? Between members of Congress and their constituents? And the political parties? What are the grounds of current criticism of the national legislature?
4. What research and staff facilities are available to members of Congress? Are they being used? Are they adequate?
5. Are Congressional organization and procedures well adapted to the efficient performance of legislative functions? What structural and procedural reforms are proposed? What would be the effect of their adoption?
6. Is Congress adequate to the increased requirements imposed upon it by the complexities of modern economic life?
7. Is Congress any more or less representative of the American people today than hitherto? Is there any merit in the suggestion for a change from the geographic to the functional basis of representation?
8. Is there any need to improve the quality of membership in the House or Senate? If so, how could it be done?

These questions suggest the nature and scope of the problems to which your Committee has addressed itself. After a series of weekly meetings with members of Congress extending over a period of nine months, in which some of these questions have been extensively explored, we submit the following summary diagnosis.

II. DIAGNOSIS

1. The contemporary decline in the effectiveness and prestige of Congress in relation to the Executive branch reflects a trend true of representative assemblies generally. It is a concomitant of the rising power of the Executive and finds its inner explanation, *inter alia*, in the great expansion and centralization of governmental functions, the technical nature of modern public problems, the growth of the federal bureaucracy, the power of Executive patronage, the decline of leadership in Congress, and in the impact of the war emergency. The chances are that this trend may

continue for some time. Dominance in our federal system has shifted to the Executive branch. Perhaps this is not a passing phase in the cycle of politics, but an underlying world-wide trend in institutional relations. State intervention in economic life and foreign wars call for swifter decisions and quicker action than the present deliberative processes of parliamentary democracy usually bring forth.

2. These trends have been intensified by the war. The major functions of Congress in relation to the conduct of the war are two-fold: (a) to provide the commander-in-chief with the powers and sinews of war; and (b) to supervise and review the conduct of the war without attempting to participate in its management. The war-time record of Congress to date is a mixed one, marked both by costly delays and minority obstruction and by the earliest pre-Administration moves for a draft army, stockpiles of strategic and critical materials, construction of pipelines to defense areas, authorization of the Alaska highway, and expansion of air power. The supervisory function of Congress has been performed by keeping check on appropriations, by the use and threat of committees of investigation, and by senatorial confirmation of the appointment of higher officials. In addition, the conduct of the war has been reviewed in debates on the floor and in radio broadcasts which have informed public opinion and influenced Administration conduct.

Despite accusations of Congressional subservience to special interest groups or to the Executive, history will record that the 77th Congress originated many of the most constructive measures that were taken by the federal government to prepare for and prosecute the Second World War. As Speaker Rayburn has well said, Congress cannot administer the laws it writes or manage the wars it declares. In a period of grave national peril, your Committee believes that Congress has coöperated quickly and effectively with the commander-in-chief. It has furnished the powers, the authority, and the funds requested by the President for the conduct of the war. After all the noisy clash of conflicting opinions and the push and pull of pressure groups reflected in hearings and debates, the people's war Congress reached decisions that command the support of a free and democratic people. It has been the mirror of America in midpassage with all its strength and weaknesses, and has made a war-time record that compares favorably with that of any parliament in the modern world.

3. Congress finds it very difficult to keep itself adequately informed upon the inner operations of a vastly expanded and intricate federal machine. It also fails to possess itself of information that is available. While it is well organized through its committee system to appropriate billions of dollars and to enact a legion of laws, it is less well organized to exercise oversight of the Administration. The functions of such oversight are four-fold: (1) to secure compliance with the legislative will; (2) to dis-

close dishonesty; (3) to check excessive enthusiasm; and (4) to energize the Administration. There are distinct limits, however, to effective supervision by Congress of the Executive branch. There are some who think that chief reliance should be placed upon Executive self-discipline and control by energizing agencies of inspection like the Budget Bureau.

4. During the past decade, policy proposals involving many innovations have emanated for the most part from the Executive branch of the federal government under presidential leadership. This development was due to the continuance of emergency conditions after 1929, and it reflected a pent-up public demand for overdue economic and social reforms following the comparative stability of the 1920's.

Instead of exercising controlling influence in the determination of public policy during this period, Congress seems to have fallen under control of the Administration, perhaps more than ever before. Since 1933, majority party leaders have tended to become managers for the President rather than spokesmen for Congress. The opinion is growing that many Congressional leaders have become too subservient or too deferential to the President. Only a few public laws contrary to the will of the Administration have been enacted by the 77th Congress. During the first session of this Congress, the Administration suffered no major defeats. A few compromises were forced, but, by and large, the Administration requested the legislation and got what it asked for.

5. The traditional machinery for formulating the Congressional party policy and managing the business of Congress—the party caucus, the Rules and Steering Committees, etc.—has been overshadowed by the development of newer *de facto* devices. Most noteworthy among these is the regular Monday morning conference at the White House between the President and the "Big Four": Messrs. Rayburn, McCormack, Barkley, and Wallace, who constitute a kind of legislative cabinet. Various committee chairmen whose bills are on the current docket also attend these meetings, which date back to the early years of the New Deal. At these conferences the President makes his wishes known to the Congressional leaders, they inform him of legislative sentiment, and the legislative program for the following week is presumably planned. It has been suggested that these conferences might well be regularized and formalized.

6. One way in which the Executive is playing a larger part than hitherto is in the formulation and maturing of major legislation. Machinery for the central clearance and coördination of administrative legislation has been created in the Division of Legislative Reference of the Bureau of the Budget. There has also been a notable growth of subordinate legislation among administrative agencies designed to implement the objectives and spell out the standards laid down by Congress. However, the essential principles, even of important measures, occasionally originate in Congress.

7. The American people still believe in popular government and have faith in Congress as an institution, but in recent years Congress has lost some of its prestige with the public. Adverse comment seems to be increasing since the United States entered the war. Some honest critics stress various alleged shortcomings of our national legislature. Other attacks are believed to veil "an assault upon representative government itself." Some go so far as to believe we have retained representative institutions from habit rather than conviction. Others fear that Congress may become "a weak and timid appendix to bureaucracy."

The present Congress has been blamed for the alleged "pension grab" with its politics-as-usual flavor, for the attempts of the farm *bloc* to avoid price control and prevent the sale of surplus government food-stocks, for efforts to control appointments to public office, for failure to settle the labor issue, for delay in preparing the country for war, for failure to economize on non-war governmental expenditures, for failure to adapt its organization and methods to the requirements of the war crisis, for frequently calling busy executives before its committees, and for lagging behind public opinion on war issues.

On the other hand, Congress has been praised for a series of achievements, including prompt grant of all the funds and powers sought by the President for the prosecution of the war, and the exposure of serious defects in the administration of the defense program. "Only the Congress of the United States," says Senator O'Mahoney, "stands between the people of the country and an all-powerful central government."

8. It has always been difficult for a member of Congress to take an overall view of the interests of the country as a whole. The interests of his district or section are likely to be paramount with him, for he depends upon their support for reëlection. Correspondence and specific personal services to constituents consume a large part of every member's time, leaving little for the study of important legislation. The volume of this traffic varies with the member and public interest in pending bills. But every day brings its series of personal interviews, its stack of letters requiring reply, and its varied requests. Senator Tydings once reported that his typical day included sixty interviews, three hundred letters, one to five committee meetings, and a meeting of the Senate.

Requests from constituents require the dutiful member to spend many hours running errands, interceding with federal departments, responding to patronage demands, rendering legal services, seeking a commission or promotion in the army or navy, getting government publications, adjusting income taxes, attending to pension claims, seeking relief from multiplying federal regulations, entertaining local politicos from back home, and the like. Many of these requests such as those for high school debate materials, legal information, copies of speeches made in Congress, poetry queries, legislative history of acts of Congress, and Fourth of July oration data are referred to the Legislative Reference Service.

Members who hope for reëlection feel duty-bound to run errands for their constituents and answer their letters. As Vice President Garner once remarked, "Letters are a Congressman's bread and butter." This burdensome business led one writer to characterize congressmen as "Uncle Sam's bellboys" running a "popular chain store service" for their constituents. Obviously, little time is left for matters of national importance, a condition of which congressmen themselves complain. In so far, however, as this type of personal public relations service by a member to his constituents tends to humanize the administration of a huge impersonal bureaucratic machine, it may be regarded as a proper function.

9. In addition to the pressure of local interests, many members of Congress also belong to the labor *bloc* or the farm *bloc* or some other interest-group. And they work with the administrative agencies that serve the corresponding sectional interests. Thus a pressure-group economy and society gives rise to "government by whirlpools" of special interest groups in which the national interest is often neglected. The pulling and hauling of powerful pressure groups creates delays and distortions that imperil national safety in war-time and threaten bankruptcy in peace-time.

10. With a few notable exceptions, e.g., the Joint Committee on Internal Revenue and the House Appropriations Committee, Congress has not taken steps to strengthen its own research and staff facilities. Reliance has been placed instead upon the administrative departments and private research agencies, each of which has its own bias. Increasing use has been made in recent years of the neutral Legislative Reference Service in the Library of Congress, both by members and by committees of Congress; and several "basic data" reports have been prepared by the Service upon request of Congressional committees. New members, however, are often unaware of the research facilities available to them at the Library of Congress.

11. Our national legislative system has developed some unforeseen usages and characteristics. These include the disintegration of leadership in the Congress among many little committees or ministries and inadequate machinery for effective control of the Executive. Much attention is devoted to local and sectional affairs at the expense of the national interest. All the greater powers of government have tended to become centralized in the hands of the Executive branch. The number of federal agencies multiplies apace, and likewise the sources of public policy. Demands upon the energy and wisdom of Congress almost overwhelm its resources as they are now organized. Debate in the House is often aimless and legislation inconsistent. Regardless of the prerogatives of the Rules Committee over House procedure, or of the privileged status of special rules, the final de-

termination of legislative priorities is lodged elsewhere, i.e., in the Speaker, the floor leader, and one or two other leaders all of whom are under pressure by the President. This small group has effective power to suppress or postpone consideration of specific measures. They give precedence to particular bills rather than formulate a program.

12. During the 77th Congress, several special or select investigating committees were created in the House and Senate. There was little concert of action among them, however, although they covered overlapping ground. For example, four committees were authorized to investigate various aspects of the national defense program; two were instructed to investigate problems of small business enterprise; and two others to study the migration of labor. While no major piece of legislation was enacted in pursuance of their findings, nevertheless the defense program was improved in certain respects as a result of publicizing its defects.

13. Joint committees have been proposed to economize the business of Congress and the time of busy administrators. But they are not popular in the House because they are apt to be dominated by the Senate members. A Joint Committee on the Conduct of the War would probably be controlled by the leadership of the President's party. If so, it would be limited as a means of independent criticism and control. The most effective independent criticism usually emanates from special committees of either house. Joint hearings by separate House and Senate committees, followed by independent deliberation, have also been suggested. This is the practice in the Massachusetts legislature.

14. The caucus is a potential instrument of party discipline. Historically, the caucus as an institution has waxed and waned. Factors favorable to it have been a fairly equal distribution of party strength in Congress and a situation in which opposing parties control Congress and the Executive. At present, the caucus is moribund, due, in part, to party realignments and, in part, to the current importance of legislation cutting across party lines. The caucus ostensibly formulated party policy and held party members to it, unless they were absent or alleged conscience or the Constitution. Its disappearance shifts the pressure of party alignment and allegiance to other devices, e.g., the party whips.

15. The typical member of Congress identifies himself not so much with Congress as an institution, or with his political party, as with the committees of which he is a member, and through which Congress largely functions. There are seventy-seven standing committees in Congress today, forty-four in the House and thirty-three in the Senate, but their activities are largely hidden from the public view, and not all of them are major, active committees. It has been suggested that committees should be smaller in size and fewer in number, with identical names and jurisdictions in both houses, and organized along lines paralleling the structure of the

permanent administrative agencies. It has also been suggested that the committee structure should be determined from the standpoint of the policy-making function rather than the supervisory function of Congress, in which case each great area of public policy would have its corresponding committee.

16. The centralization of governmental functions, the complex and specialized character of modern legislation and administration, the newer means of rapid, large-area dissemination of ideas, and the equally modern methods of accurate sampling of current opinion have inevitably altered the position of Congress in making and administering laws, in creating, focussing, and expressing opinion. Yet despite press conferences, fireside chats, columnists, commentators, and Gallup polls, Congress still possesses essential deliberative and representative functions which no other group is equipped to perform so well.

These functions as yet have not become sharply focussed or publicly recognized. The low esteem in which the public is currently reported to hold the national legislature may be due partly to a failure on the part of Congress to acknowledge and to develop its own peculiar functions, and partly to the obscuring of the performance of its solid, essential activities behind archaic forms of traditional parliamentary behavior carried on in the public view. In short, Congress, unlike the President and the Supreme Court, puts its worst foot forward to the public view.

A major improvement might be that of bringing Congressional form into line with the realities of the peculiar tasks. This would involve at least three procedural changes, all of which require merely the revision of legislative rules and practice, not of statutes or constitutional provisions.

First would be the recognition of committee work as the heart of Congressional activity. Here, actually, congressmen organized in segments review the operations of administration, of legislative and spending proposals, and, at times, themselves initiate new law. Committee work includes hearings as well as discussion in closed meetings. It involves contact with experts and written material. It is the center of legislative activity where criticism of administration and decision upon proposed legislation is largely made. Consequently, most of the days and most of each day of a Congressional session should be legally and specifically devoted to committee meetings. Hearings, preferably joint hearings for concentration of attention, should be open to the public by card, as is now the Senate gallery, and should be recognized by constituents and sightseers as the way to see Congress at work. Rather than looking down at a forlorn performance before empty chairs, the public could choose between attendance at one or more parts of a twelve-ring committee circus where questions and argument would be lively and real.

Full meetings of the two legislative bodies are actually used for two main purposes, i.e., (1) to record votes on specific measures reported from committees, and (2) to carry on debate, not so much to affect the votes of the other members as to influence public opinion among the congressman's constituents and to explain the legislator's negative or affirmative votes on specific measures. These functions could readily be performed during two or three evenings a week. Thus there might be an evening session once a week or, near the end of a session, a full day session—say Friday—during which formal committee reports and votes should succeed each other with something like the simple dignity of an opinion day in the Supreme Court. When contended measures were to be voted upon, such weekly voting sessions might be well attended, with galleries filled and a radio box informing the country and interpreting to it the decisions made. The public would see and hear the Congress acting out in a business-like way one of its essential rôles—that of recording decisive popular judgments on legislation.

Similarly, Congressional debate could be telescoped into one or two other evenings a week—say Monday and Wednesday, with a reciprocal adjustment of *Quiz Kids, Information Please*, and Raymond Gram Swing to avoid too much competition—with Congressional leaders debating major legislative issues before their own visible audience and the radio audience. It is not too much to hope that this rostrum argument would furnish some complement to, if not rivalry with, fireside chats, Town Halls, and University Round Tables.

Actually, only a small number of congressmen could participate in these preferred positions of public national debate. But the others, instead of engaging in frustrating harangues before empty benches, could regularly be given places on the agenda of committee hearings to present their views and arguments. For this purpose, places on the agenda would be open rather freely to non-committee members.

Most congressmen are not national figures. They are not entitled to, nor will they, gain the ear of a national audience. But in practically all cases they are prominent state and local figures. It is their essential function to interpret national policy, laws, and administration to the localities and *vice versa* to assess, to focus, to interpret local opinion to the national government. No other branch of the federal government is constituted to perform this essential representative function. It is important that the function be publicly recognized and regularized in the Congressional time-table. This might be done by a regular monthly four-day recess during which there would be no voting, debates, or committee sessions in Washington, and during which congressmen and senators would be expected to return to their states and districts there to give an account through radio or public speeches to their constituents of their votes and proposals and to receive at first hand delegations of citizens interested in controversial issues.

These three procedural changes may seem to leave out of account the dreary stream of parliamentary by-play and desultory discussion, frequent bluster and occasional filibuster, embalmed in the *Congressional Record* for libraries to file and a few hundred curious scholars to read. They do leave out all such archaic practice. Actually they would not be missed. In their place would be solid days in committee rooms in the vital atmosphere of conversational, or at least courtroom, give and take; periodic evenings in the simple rite of a succession of polls or votes, a weekly Congressional radio evening no longer than, occasionally as exciting as, and almost always as important as, a baseball game; a monthly return to the home folks to persuade, to explain, and to listen to the constituency which creates and may destroy the mandate under which the congressman acts. Such a reorganization of procedure would leave unsolved many problems. But it would be a step in the direction of uniting appearance with reality in the legislative process, and would give promise of adding to the respect and understanding in which the legislative branch is held by the country at large.

17. In addition to these changes, several methods of increasing the effectiveness of Congress have been suggested by various observers. Some are concerned with relations between Congress and the Executive branch; others focus attention on the relations between Congress and the general public. Some propose to improve legislative staff aids; others advocate reforms in Congressional structure or procedures. Some favor changing the basis of representation in our national legislature; others aim at improving the quality of the membership. A summary follows of the most noteworthy proposals affecting Congress that have been brought to the attention of your Committee.

III. SUMMARY OF PROPOSALS AFFECTING CONGRESS[1]

Relations with the Executive:

1. Make members ineligible for Presidential appointment until two years after expiration of their terms.
2. Decentralize the business of government to relieve undue pressure at the center, revitalize the periphery, and restore efficiency at both ends.
3. Regularize contacts between Congressional committees and corresponding administrative agencies.

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[1] The Committee wishes it understood that the remedies proposed in this section of the report are merely suggestions that have been offered, and that they have not been endorsed by a majority of the Committee members.

4. Regularize and formalize weekly conferences between the President and the leaders of Congress, creating a Legislative Cabinet.
5. Provide by law that members of the Cabinet shall be entitled to occupy seats on the floor of Congress, with the right to participate in debate on matters relating to the business of their several departments.
6. Expand the facilities of the General Accounting Office by creating therein an Executive Efficiency Service.

Relations with the Public:

1. Debate legislative issues over the radio.
2. Develop better Congressional publicity.
3. Let each member at the end of each session send a report to his constituents showing how he voted and why on all major bills.
4. Have shorter sessions so that members can spend several weeks a year in their districts cultivating better relations between Congress and the people.
5. Hold voting sessions and debate sessions of Congress each one evening a week and broadcast to the country: committee hearings and sessions to occupy regular weekday schedule and hearings in most cases to be open to the public; monthly recess for Congressmen's return to constituencies for public report and conference.

Staff Aids:

1. Give each active and important committee of Congress an expert staff or a research assistant connected with the Legislative Reference Service of the Library of Congress.
2. Expand the staff of the Legislative Reference Service by increased appropriations.
3. Achieve coördination at the staff level by creating in the LRS a single research pool for all investigating committees.
4. Locate an LRS liaison officer in the House Office Building.
5. Invite new members to visit the Library of Congress and learn of services available there.
6. Supplement annual reports of Departments to Congress by questionnaires issued to the Departments by the corresponding Congressional committees, showing their replies.
7. Set up a joint committee of the House and Senate on planning and reconstruction, with an expert staff to serve as a liaison between Congress and administrative agencies, to analyze their reports, and to provide Congress with an independent source of information.

Changes in Structure:

1. Create a Joint Committee on the Conduct of the War composed of representatives of the House and Senate Military and Naval Affairs and Appropriations Committees.
2. Create one joint committee with several subcommittees on different segments of the war program.
3. Assign particular aspects of the war program to select committees to investigate.
4. Reorganize the committee system in both houses so that there would be nine or ten major committees in each house paralleling the principal administrative departments. Chairmen of major committees to form a Legislative Cabinet which would control legislation.
5. Create a joint committee composed of the present Appropriations, Ways and Means, and Finance Committees, with a strong staff, to bridge the gap between the Legislative and Executive branches in budgetary matters.
6. Create a Joint Committee on Public Accounts.
7. Appoint a special committee of Congress to study its structure and procedures.

Changes in Procedure:

1. Let committees of Congress choose their own chairmen on merit and abolish the seniority system.
2. Elect committees from the floor or in caucus.
3. Hold joint hearings when similar bills have been introduced in both chambers.
4. Give jurisdiction over private claims to U. S. district courts.
5. Consolidate all federal appropriations for construction into one appropriation bill, to be considered by Congress at the start of each regular session. This would gear the appropriating mechanism to public works policy, eliminate political pressures for a geographical distribution of funds on each departmental appropriation bill, and secure enactment of a public works program in time to undertake it during the approaching construction season.

Improvements in Membership:

1. Pay higher salaries.
2. Have four-year terms.
3. Reduce the size of the House.
4. Grant federal aid to defray costs of campaigns.
5. Organize an in-service training school for new members.
6. Educate the electorate to choose better men to represent them.

The Rôle of State Governments in the Post-War Era. The states can do little toward winning the war except to give their whole-hearted coöperation to the President's program for prosecuting the war. This coöperation is, of course, essential and of inestimable value; but the states are not engrossed in planning strategy, directing the war effort, or financing the struggle. By comparison with the federal government, they have immeasurably more time and energy available for engaging in other activities. This time and energy should be devoted to the achievement of something constructive; and the most constructive contribution which the states can make to our national economy is to devote themselves now to the task of preparing for a rôle of active participation in dealing with the serious problems with which we shall probably be confronted after the war. Even if those problems, for one reason or another, do not materialize, it is far better to be prepared for an emergency which never comes than to be unprepared for one which does come.

Compared with the federal government, the states are in a relatively sound financial condition. Most of them are not so heavily burdened with debts as to be faced with staggering problems in that respect, and most states, through proper planning and management, can greatly diminish their debt loads and reduce unnecessary operating expenses even while the war is going on. As a matter of fact, many states have been enjoying surpluses. It is possible that since many derive their largest amounts of revenue from such sources as sales and use taxes, gasoline taxes, and the like, they may find their existing tax laws not adequate to continue to produce surpluses. The increasing scarcity of consumers' goods for sale, gasoline rationing, and other factors may operate to deflate state revenues. Thus far, however, predictions concerning the immediate threat to the financial security of the state governments have not been too alarmingly borne out by the experience of most states. Even if state revenues decline to some extent under existing state tax laws, most of the states will not be confronted with insoluble financial problems in the immediate future; and the states are unquestionably in a far better position economically to strengthen their financial structures and to plan for the future than is the federal government.

Obviously, this is the chance for the states to reclaim the high station which they formerly occupied in our national scheme of things and to reestablish themselves as indispensable American institutions. And now is the time to act. When the war is over, the state governments should be prepared to participate actively in any program of rehabilitation which may be necessary. They should be ready to bear their fair share of the effort and expense necessarily accompanying the carrying out of any such program, and they should be equal to the task of assuming any rôle of leadership and direction which they may be called upon to fill. Nobody can quarrel with states which seek to rehabilitate themselves and which thereby endeavor to contribute actively and constructively to our national welfare, and such a display of democracy in action will inspire in the people of this country a renewed confidence in the vitality and sufficiency of democratic institutions by demonstrating that economic recovery, when planned for, can be achieved without need for authoritarian direction from above.

Basically, there are four aspects to the plan which every state should immediately adopt and commence to execute. First, every state should start at once to pay off its debts as rapidly as is practicable and consistent with sound state fiscal policy, and every state should otherwise endeavor now, and for the duration of the war, to place its economic house in order so that it can meet any post-war financial crisis that may come, and so that it can superimpose any structure of necessary post-war activities, requiring the expenditure of money, upon a solid financial foundation. Second, every state should maintain or increase existing tax levels and reduce expenditures, as far as possible, for the purpose of accumulating surpluses, and these surpluses should be earmarked and set aside for use after the war is over. Third, every state should begin immediately to lay out the details of a program for the use of these surpluses during the period of post-war readjustment. Among the possibilities which should be studied by each state are slum clearance and housing projects; the need for the erection of public buildings; the necessity for repairing and expanding highway systems; plans for the construction of playgrounds; the development of writing, drama, and other cultural programs; the desirability of erecting and maintaining conservation camps; youth projects; the possibility of expanding programs for adult vocational education; the need for reëxamining, reëvaluating and expanding public health, welfare, and educational services and facilities; the desirability of furnishing state hospital and clinical services; programs intended to expand and improve our facilities for scientific research and experimentation for the purpose of bettering production methods both in industry and in agriculture, for the purpose of finding more uses for industrial and agricultural commodities already produced, and for the purpose of finding new products which industry and agriculture can produce economically; the need for creating more adequate safeguards to protect the consuming public; the need for greater extension of adequate roads and electrification facilities into rural areas; the development of plans and machinery designed to effect more harmonious relations among workers and to encourage greater coöperation among labor, management, and the interested public; the need for developing more equitable systems of taxation; and countless other projects. Every state should commence now to inventory all of its individual needs. These, of course, will vary with each state, but all efforts should be directed toward the major objectives of providing employment, training, and care for, and greater service to, our citizens after the war. Fourth, every state should commence immediately to encourage local governments to economize and otherwise to strengthen themselves financially in order that they, too, may prepare to assume their proportionate share of responsibility for solving the social and economic problems with which they may reasonably expect to be confronted in the post-war era.

The paying of debts, the elimination of unnecessary expenditures, the building of reserves, the sterilization of these reserves for use in meeting post-war needs, and the preparation now of blue-prints of public works and services which will create employment and offset possible post-war depressions, and which will provide better training and care for, and greater service to, the people of the country, together with enlistment of the support and coöperation of local governments, are matters which the states are capable of initiating, developing, and consummating. Officials of the several states should confer with each other frequently for the purpose of exchanging ideas and suggestions and for the purpose, where possible, of coördinating the efforts of the individual states in carrying out their respective programs. The states should also avail themselves of any coöperation which the federal government can extend to them now, although they should constantly remember that the immediate responsibility for initiating and planning the program is primarily theirs.

At a Conference of the Council of State Governments held in Chicago last spring, legislators and administrators representing the Midwestern states met and formulated a broad program which they recommended to all of the states for adoption. The purpose of the conference was to outline for state and local governments the contributions which they can make to the present war effort and to the solution of possible post-war problems. The Conference's report, designated as a report "Adopted by the Regional Conference on Fiscal Problems of the Midwestern States," on May 15, 1942, lays particular stress upon the part which the state and local governments should play in the prosecution of our war effort. A portion of this report is here quoted:

"To prosecute the war to a successful conclusion, this Conference recommends that state and local governments adopt the following fiscal policies: (1) Pay off debts. (2) Restrict expenditures. (3) Build up reserves and sterilize such reserves in dormant bank deposits or in federal government bonds. (4) Maintain tax rates consistent with the national and state economy. (5) Prepare to offset possible post-war depression by developing programs and blue-prints for public works and services, and by accumulating means of financing them. (6) Remove hindrances to production, convert state-owned facilities to war uses. (7) Improve administrative management to conserve manpower and commodities and to minimize impairments of services. (8) Join actively in the national economic policy to control the cost of living. (9) Distinguish carefully between war-created local needs that warrant federal aid and those that should properly be met out of local resources. (10) Re-appraise the educational system, with special consideration given to vocational training and rehabilitation. (11) Re-appraise existing health, welfare, and related activities and services in the light of changed economic conditions."

As the opening sentence of this quotation indicates, the conference recommended that state and local governments adopt the foregoing suggestions for the purpose of assisting in the prosecution of the war effort. All of the recommendations should be adopted by the states, not only for the purpose of assisting in the prosecution of the war effort, but also for that of preparing the states to play an active rôle in the solution of our post-war problems.

Such a plan as the one under discussion, particularly that portion relating to the maintenance or increase of present state taxes, will collide with the interests of individuals and groups within the states and undoubtedly will meet with savage, organized opposition. Already, in many states where cash surpluses have been accumulated, organized agitation has developed for the reduction of taxes. The argument most urgently advanced is that since the federal government is continually increasing the tax load of citizens, the states should manifest a spirit of coöperativeness by curtailing state taxation. However, the states will be very unwise if they allow this or any other argument of similar import to dissuade them from maintaining, and even increasing, existing tax levels for the purpose of building up substantial reserves for use in carrying out carefully planned programs for post-war rehabilitation. The states should neither shirk their responsibility nor pass by their opportunity of assuming a rôle of active participation and leadership in the post-war era merely because, by closing their eyes and following the path of least resistance, they could achieve a slightly greater degree of immediate, but only temporary, harmony. Most people recoil from the thought of paying higher taxes; but the vast majority of average American citizens will pay, and will pay still more, however much they may grumble in the process, if they are convinced that they are paying for a worth-while cause.

But the creation of cash surpluses by the states may operate as a boomerang unless adequate safeguards are provided. Cash surpluses created by increasing state taxation should be clearly segregated and kept separate at all times from other state money, and these funds should be rigidly circumscribed by every known protective device, including legislative restrictions if necessary. It should be made as nearly certain as possible that no money set aside for post-war use will be within the reach of those unable to endure the thought of being denied the realization of some pet dream or selfish project while cash reserves pile up before their covetous eyes. It is also both advisable and necessary that such cash reserves be earmarked specifically for post-war use so as to enable state officials to withstand those political pressures always brought to bear upon them when taxpayers become aware that there exists in the state's possession a cash surplus for which no clear-cut explanation can be advanced.

Even if some of the states, during the war, find it difficult or impossible to create, to segregate, and to maintain substantial reserves of funds for use after the war, every state should now do everything in its power to pay off as many of its debts as possible, to economize and otherwise to improve its financial condition so as to be in as strong a financial position as possible, when the war ends, to launch a vigorous program designed to combat unemployment and other problems which it may be called upon to assist in solving. Likewise, a state's inability at present to create revenue surpluses should not discourage it from drafting plans for post-war action. The least that a state can do in this respect is conscientiously to attempt to determine in advance what its probable post-war needs and problems will be, and to know what it wishes to do about them, whether or not it can clearly visualize at the moment the exact sources from which it can derive the revenues necessary to finance a large-scale post-war employment and rehabilitation program.

This latter phase of the plan under discussion—the development of plans whose execution after the war may tend to create the necessary transitional employment and care for our people—will also be subjected, if adopted by the states, to vicious and vigorous attacks. For example, plans for slum clearance and housing projects will be assailed by real estate organizations. There is probably no phase of the program to which some influential persons, having vested interests in the existing order, will not vehemently object.

The real danger to the chances of success of a plan such as that under discussion lies in the fact that numerous state officials are too susceptible to political pressures. Many find it difficult enough to meet squarely the emergencies of the moment. Even less likely is it that they will take a firm stand for the carrying out of a long-range program designed to forestall the occurrence of a possible future crisis. If the states, as we know them, should utlimately lose their importance as vital American institutions, and if they should eventually disappear in substance from our political system as living organisms and as vital bulwarks of democracy, their downfall will be attributable, in part at least, to shortsightedness and fear of political pressure on the part of state leaders themselves. If the malefic attitude which some key state officials have evinced toward their civic responsibilities is successfully combined with the shortsightedness and selfishness of other state leaders so as to dictate the policies which the state governments will pursue now and after the war with respect to the problem of anticipating and meeting the country's post-war needs, we may reasonably expect to be confronted after the war with two alternatives—the one, disastrous collapse and revolution, the other, the relentless extension of national regimentation.

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RURAL LOCAL GOVERNMENT

County and Township Government in 1941.* With national defense problems paramount in the public mind, it is not surprising that developments in rural local government during 1941 revealed, more than in normal times, the imprint of national and world conditions. State legislatures, though their sessions preceded Pearl Harbor, devoted much attention to defense problems and assigned to local governmental units an important rôle in defense organization and activities. Various steps were taken to foster coöperation in the defense effort by government at all levels; and, in view of the necessity for large national expenditures for defense purposes, additional emphasis was placed upon the need for local economy. Concurrent with the various defense-related developments was a continuation of normal peace-time efforts to improve the organization and operation of rural local government. As in former years,[1] the events of 1941 will be summarized under the following headings: (1) areas; (2) organization and personnel; (3) functions; (4) finance; (5) optional charters and home rule; and (6) intergovernmental relations.

I. AREAS

Outstanding among developments of the year with respect to local-government areas was the continued stream of legislation creating, or authorizing the creation of, special districts. Arizona, Ohio, and Wyoming were added to the list of states which authorize the formation of soil conservation districts.[2] By June 15, 1942, 771 such districts, embracing approximately 451,990,000 acres and including more than two million farms, had been established in 41 states.[3] Florida authorized the creation of erosion-prevention districts within any county. Flood-control districts, to be governed by the respective county commissioners courts, were established in four Texas counties. Organization of fire-protection districts was authorized in Colorado and in certain Missouri counties. Various counties in Missouri and Washington, and certain Kansas townships, were empowered to establish sewer districts. Washington extended to all counties the power, previously granted only to Class A counties, of establishing sanitary districts for the collection of garbage in areas outside municipal corporations. Other *ad hoc* districts the establishment of which was authorized include park and recreation districts in Oregon, rural water supply districts in Kansas, and rural free library districts in Washington.[4]

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* Mr. Alvin E. Rosenbloom, a student in the University of Illinois College of Law employed on NYA funds, assisted in the collection of materials for this article.

[1] See this REVIEW, Vol. 31, pp. 884–913; Vol. 32, pp. 936–956; Vol. 33, pp. 1058–1072; Vol. 34, pp. 1145–1166; Vol. 35, pp. 1106–1119.

[2] *Acts, Resolutions, and Memorials of Arizona,* 1941, ch. 43; *Legislative Acts and Joint Resolutions of Ohio,* 1941, p. 812; *Session Laws of Wyoming,* 1941, ch. 134.

[3] Data supplied by Soil Conservation Service, U. S. Department of Agriculture. See *infra,* "Federal-Local Relations."

There seemed to be somewhat less interest than usual in reducing the number of governmental areas through consolidation or dissolution.[5] In Connecticut, the governments of Guilford borough and the town of Guilford were consolidated. Several similar consolidations effected in that state in former years were reported to have been successful in reducing duplication of officials and overlapping of functions.[6] A bill to abolish Indiana townships having less than $500,000 assessed valuation failed of passage in the end-of-the-session rush. Had the measure become law, it would have operated to abolish approximately one hundred of the state's 1016 townships.[7]

II. ORGANIZATION AND PERSONNEL

New Offices. Several states, in legislation providing for state and municipal councils of defense, also authorized the establishment of county defense councils.[8] Power to establish such councils is vested in some instances in the chairman or president of the county board; in others, in the county board as a whole, to be exercised by ordinance; and in still others in the state defense council. The agency creating the council ordinarily determines its composition. Under the provisions of this enabling legislation, defense councils have actually been established in numerous counties, particularly in the coastal areas.[9]

Arkansas established in each county an *ex officio* delinquent tax board to supervise collection of delinquent taxes on personal property.[10] Several Tennessee counties were provided with general sessions courts, consisting of salaried judges with county-wide jurisdiction, to replace justice-of-the-peace courts.[11] North Carolina established the office of tax collector, or authorized its establishment, in various counties; and public library boards were created for two South Carolina counties.[12] Kent and Sussex counties in Delaware were provided with departments of elections consisting of three members appointed by the governor.[13]

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[4] *Laws of Colorado,* 1941, ch. 130; *General Acts and Resolutions of Florida,* 1941, p. 2435; *Kansas Session Laws,* 1941, chs. 7, 399; *Laws of Missouri,* 1941, pp. 505, 557; *Oregon Laws,* 1941, ch. 327; *General and Special Laws of Texas,* 1941, p. 568; *Session Laws of Washington,* 1941, chs. 65, 98, 210.

[5] Notwithstanding the continued creation of new governmental units, the last decade has witnessed a net reduction in the total number of local units, particularly in rural areas. The most substantial decreases, principally through consolidation and dissolution, have been in school districts, towns and townships, and special districts. See William Anderson, *The Units of Government in the United States* (Public Administration Service, Chicago, 1942 ed.).

[6] Max R. White, "Town and City Consolidation in Connecticut," in this REVIEW, Vol. 36, pp. 492–502 (June, 1942).

[7] Gail M. Morris, note in *National Municipal Review,* Vol. 30, pp. 304–305 (May, 1941).

[8] For example, *Statutes of California,* 1941, ch. 561; *General Acts and Resolutions of Florida,* 1941, p. 45; *Laws of Illinois,* 1941, Vol. I, p. 1264; *Kansas Session Laws,* 1941, ch. 347; *Laws of New York,* 1941, chs. 22, 210; *Acts and Joint Resolutions of South Carolina,* 1941, p. 203. See *infra,* "New Functions."

[9] In some instances the work of several county councils within a particular area is coördinated through a regional council. See, for example, Samuel C. May and Robert E. Ward, "Metropolitan Civilian Defense in the San Francisco Bay Region," *Western City,* Vol. 18, no. 5, pp. 18–19 (May, 1942).

Office Consolidation. After a turbulent course in which failure had several times been encountered,[14] the movement to consolidate the county offices of register and sheriff within New York City finally met with success. The city voters in the November election, while rejecting two alternative proposals supported by the Democratic party, approved a charter amendment which provides for single city-wide offices of register and sheriff filled by the mayor from civil service lists. The successful amendment had been proposed by initiative petition and was sponsored by various civic groups. Following adoption of the proposal, the New York City civil service commission held competitive examinations for the two positions, and late in December Mayor La Guardia appointed the first incumbents of the new offices from the registers of eligibles so established. These appointees took office on January 1, 1942, and immediately began reorganization of their office staffs on a civil service basis.[15] The validity of the charter amendment was upheld in December, 1941, by the New York court of appeals.[16]

Each of three optional forms of county government provided by North Dakota statutes[17] involves a substantial degree of office consolidation. Under the Consolidated Office Form, the county auditor serves as county judge, register of deeds, and clerk of the district court. With respect to the offices of sheriff, state's attorney, and superintendent of schools, inter-county consolidation is to be permitted, the county board being authorized to appoint to any one or more of these offices, to serve on a part-time basis, the corresponding officer of an adjoining county. The County Manager Form provides that the sheriff shall assume the duties of constable and coroner; the county judge those of justice of the peace and clerk of the district court; the director of finance those of auditor, treasurer, and register of deeds; and the director of public works those of surveyor. Under the Short Form of County Managership, the manager assumes the duties of auditor, register of deeds, coroner, public administrator, and surveyor, and may, at his discretion, perform the duties of tax collector, treasurer, and purchasing agent. Duties of justice of the peace and clerk of the district court are transferred to the county judge. The manager may appoint as sheriff or state's attorney the corresponding officer of an adjoining county.

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[10] *Acts of Arkansas*, 1941, no. 342.

[11] *Private Acts of Tennessee*, 1941, chs. 6 (Hamilton), 50 (Madison), 91 (Warren), 363 (Bledsoe), 393 (Henderson), 509 (Lewis). Justices of the peace in these counties, although divested of jurisdiction over civil and criminal cases, retain their authority to serve as members of the quarterly court (county board) and to perform marriages.

[12] *Public-Local Laws of North Carolina*, 1941, chs. 78, 91, 100, 164, 329, 361; *Acts and Joint Resolutions of South Carolina*, 1941, pp. 91, 101.

[13] *Laws of Delaware*, 1941, chs. 125, 126. A similar department, under a larger board, had been provided for New Castle county two years earlier. *Ibid.*, 1939, ch. 115.

[14] See this REVIEW, Vol. 34, pp. 1149–1150; Vol. 35, pp. 1107–1108.

[15] Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 30, pp. 604, 658 (Oct., Nov., 1941); Vol. 31, pp. 47–48 (Jan., 1942).

[16] Burke v. Kern, 287 N.Y. 203, 38 N.E. (2d) 500 (1941).

[17] See *infra*, "Optional Charters and Home Rule."

Special acts in Georgia and North Carolina effected the consolidation of designated offices in specified counties.[18]

Terms of Officers. More attention was given than for several years past to lengthening the terms of local officers. In Indiana, first legislative approval was given to proposed constitutional amendments to increase from two to four years the terms of the county treasurer, sheriff, coroner, and surveyor, and of the prosecuting attorney.[19] The Montana legislature proposed a constitutional amendment, for submission to the voters in the 1942 election, which if adopted will increase from two to four years (1) the terms of the constitutional offices of county attorney and justice of the peace, and (2) the maximum term which may be provided for county and other local offices established by statute. Missouri increased from two to four years the terms of constables in certain counties and townships.[20] North Carolina continued, as in former years, to enact special laws lengthening the terms of designated officers in particular counties.[21]

County and Town Executives. Manager government for counties and towns continued to attract widespread interest. North Dakota, in enacting a series of optional-government laws in conformity to constitutional mandate, provided two varieties of county-manager government, as well as a third alternative form of organization under which some degree of administrative authority would be centered in the county auditor.[22] The Nebraska legislature, undaunted by previous reverses at the hands of the courts and the voters,[23] again proposed a constitutional amendment to permit the enactment of a county-manager law. If the proposal is ratified, the legislature will be authorized to provide an optional form of government in which county officers may be either elected or appointed.[24]

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[18] *Acts and Resolutions of Georgia*, 1941, pp. 726, 754, 978; *Public-Local Laws of North Carolina*, 1941, chs. 111, 157, 233.

[19] *Laws of Indiana*, 1941, pp. 972, 973. The other principal county officers in Indiana (auditor, recorder, and circuit clerk) are already provided with constitutional four-year terms.

[20] *Laws of Missouri*, 1941, pp. 325, 326; *Laws, Resolutions, and Memorials of Montana*, 1941, ch. 116.

[21] *Public-Local Laws of North Carolina*, 1941, chs. 13, 116, 117, 165, 399. See this REVIEW, Vol. 34, p. 1150.

[22] See *infra*, "Optional Charters and Home Rule."

Modified forms of manager government were provided by special legislative acts for the counties of Hamilton (Chattanooga) in Tennessee and Darlington in South Carolina. The manager in Hamilton county is to be appointed by a county council (consisting of the county judge, as *ex officio* chairman, and four elective members) to serve during the council's pleasure; but the powers conferred upon him fall considerably short of those usually considered essential to effective operation of the manager plan. Though the manager may make recommendations with respect to appointments, the appointing power is lodged in the council. The taxing power remains with the quarterly county court, but it is made mandatory upon that body to levy taxes sufficient to cover the expenditures provided for in a budget adopted by the council. In Darlington county, the manager is to be appointed by the governor, on recommendation by a majority of the county legislative delegation, for a two-year term. Powers heretofore vested in the county commissioners and county directors are transferred to the manager; and he is specifically authorized to supervise public works, countersign warrants for the disbursement of funds, and purchase county supplies and equipment. An advisory commission of five members, appointed in the same manner as the manager and for the same term, is authorized to advise the manager in the performance of his duties; and, in connection with county purchasing, to promulgate binding regulations concerning advertisements, bidding, and the acceptance of bids.[25]

The Maryland counties of Anne Arundel and Wicomico were reported as displaying interest in manager government; and the plan was recommended for Montgomery county, in the same state, in a survey report by the Brookings Institution. In the Oregon legislature, a joint resolution proposing a constitutional amendment to provide for county manager government was approved by the house of representatives, but failed of passage in the senate.[26]

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[23] See this REVIEW, Vol. 31, pp. 890, 907; Vol. 34, p. 1150; Vol. 35, p. 1108.

[24] *Session Laws of Nebraska*, 1941, ch. 46.

[25] *Acts and Joint Resolutions of South Carolina*, 1941, p. 54; *Private Acts of Tennessee*, 1941, ch. 156; Elwyn A. Mauck, note in *National Municipal Review*, Vol. 30, pp. 174–177 (Mar., 1941); James K. Coleman, note in *ibid.*, pp. 371–372 (June, 1941). The South Carolina statute providing for gubernatorial appointment of the Darlington manager was passed after an earlier act of the same year, which vested the power of selecting the manager directly in the hands of the county legislative delegation, was invalidated by the circuit court as violating the principle of separation of powers.

[26] Howard M. Kline, note in *National Municipal Review*, Vol. 30, pp. 303–304 (May, 1941); Elwyn A. Mauck, notes in *ibid.*, pp. 304, 658 (May, Nov., 1941); H. M. Olmsted, note in *ibid.*, p. 716 (Dec., 1941).

As in the preceding year, more progress in actual adoption of manager government was made at the town than at the county level. Manager charters were reported to have been adopted by popular vote by the Maine towns of Castle Hill, Corinna, Danforth, Island Falls, Mars Hill, Mercer, Merrill, Patten, and Sherman Mills; and by the Vermont towns of Manchester, Northfield, and Poultney. On the other hand, manager proposals were rejected by the towns of Enfield in Connecticut and Canton in Massachusetts, this being Canton's fifth rejection of the plan within twenty-one years.[27]

Personnel Administration. The year's most significant event in the field of personnel administration was the enactment of legislation requiring inauguration of the merit system in all local governmental units in New York State. The New York constitution since 1894 has required that appointments and promotions in the local services be made according to merit and fitness, to be ascertained, as far as possible, by examination. This provision, however, was interpreted by the state civil service commission to mean that the merit system was to be extended as the commission deemed practicable. Actually, extension was slow, with many local units remaining outside the merit system. A few years ago, the court of appeals held that public employment contracts made without compliance with the constitutional provision were invalid; and it was as a result of this decision that the 1941 statute was passed. Under the new law, each county may select, by action of its board of supervisors after public hearing, any of the three types of civil service administration already in operation in the state: (1) by a three-member county civil service commission; (2) by a county personnel officer; or (3) by the state civil service commission. Any county failing to make a selection by July 1, 1942, automatically comes under the jurisdiction of the state commission. The merit system is to become effective in each county not later than July 1, 1943; and after July 1, 1944, counties may, at their option, change from one form of civil service administration to another. The five counties within New York City are to remain under the jurisdiction of the state civil service commission.[28]

No county outside New York State adopted the merit system in 1941.[29] However, laws were passed providing optional civil service systems for the counties of St. Louis (Duluth) and Ramsey (St. Paul) in Minnesota, and for Wayne county (Detroit), Michigan. In each instance the provisions of the law may be adopted by popular vote, the question of adoption being submitted by resolution of the county board.[30] Each law provides for a three-member civil service commission appointed by the county board, and for a civil service director or administrator appointed on the basis of competitive examination. Ramsey county may, however, instead of appointing an administrator, contract with the city council of St. Paul for the services of the city civil service bureau in administering the county civil service system.

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[27] *City Managers' News Letter* (International City Managers' Association, Chicago), Jan. 1, 1942; H. M. Olmsted, notes in *National Municipal Review*, Vol. 30, pp. 221–222, 289, 436 (Apr., May, July, 1941).

[28] *Laws of New York*, 1941, ch. 885; Morton Yarmon, "New York State Extends Merit System," *National Municipal Review*, Vol. 30, pp. 253–257, 274 (May, 1941).

[29] James M. Mitchell, "Personnel Developments in 1941," *Municipal Year Book*, 1942, pp. 219–223.

Several states, actuated by federal-aid requirements under the Social Security Act, established merit systems for county welfare departments or modified systems previously established.[31] New Mexico placed county health personnel under merit system rules to be adopted by the state board of health in conformity to federal requirements.[32] A Minnesota law applicable to Hennepin county (Minneapolis) provided that employees in the sheriff's office, after six months of continuous employment, may be suspended or discharged only for one or more of five specified causes, and then after filing of written charges and a hearing thereon before the sheriff.[33] Pennsylvania required that first-class townships employing three or more policemen observe merit principles in the appointment, promotion, and removal of police personnel. Counties of the fourth and fifth classes in Pennsylvania were authorized to establish retirement systems for their employees, while an earlier act providing a retirement system for counties of the third class was amended to cover employees of various county districts and authorities as well as those of the county proper. North Dakota placed elective county officials under the provisions of the state workmen's compensation act.[34]

III. FUNCTIONS

New Functions. Legislative sessions of the year were prolific in the production of acts conferring upon counties power to perform new functions. These laws will be considered in several groups, as they relate, respectively, to housing and public works, health and recreation, agriculture and conservation, planning and zoning, civilian defense, or the promotion of local prosperity through expenditures for advertising.

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[30] *Public Acts of Michigan*, 1941, no. 370; *Session Laws of Minnesota*, 1941, chs. 423, 513. The respective county boards of all three counties have provided for submission of the question at the general election in November, 1942.

[31] *Laws of Illinois*, 1941, Vol. I, p. 493; *Session Laws of Minnesota*, 1941, ch. 476; *Public Laws of North Carolina*, 1941, ch. 270; *Oregon Laws*, 1941, ch. 138.

[32] *Laws of New Mexico*, 1941; ch. 97.

[33] *Session Laws of Minnesota*, 1941, ch. 385. Orders of the sheriff for suspension or dismissal are subject to review by the district court.

[34] *Laws of North Dakota*, 1941, ch. 303; *Laws of Pennsylvania*, 1941, nos. 45, 136, 296, 313.

In the field of housing legislation, as it concerns county government, three rather distinct trends were evidenced by: (1) the continued enactment of legislation authorizing creation of county housing authorities; (2) increased emphasis upon housing of a distinctly rural character; and (3) the granting of power to county authorities to participate in defense housing. Several states—including Florida, Montana, North Carolina, and West Virginia[35]—enacted new statutes, or amended existing laws providing for city authorities, to authorize the establishment of county housing authorities; and the actual organization of such authorities continued apace. By June 30, 1941, a total of 259 county or parish authorities in 15 states had been established to construct and manage rural housing with federal aid. In addition, 17 regional authorities, embracing 93 counties and parishes in Florida, North Carolina, and Louisiana, had been set up to engage in rural housing operations.[36]

In contrast to earlier laws designed primarily to foster housing in urban or suburban areas, most of the 1941 acts specifically conferred upon county housing authorities power to rent or sell dwellings to farmers of low income. At least one state from among those having previously provided for county housing authorities, viz., Washington, amended its law to confer the additional power of providing farm housing.[37] The various statutory definitions of "low-income farmer" are of substantially similar import, and that of Washington may be taken as typical. In that state the term is defined to mean persons or families who: (1) live under unsafe or insanitary housing conditions; (2) derive their principal income from operating or working upon a farm; and (3) have had an average net income for the past three years below the amount determined by the housing authority to be necessary to enable them to obtain decent, safe, and sanitary housing. Unlike urban housing projects, rural projects consist of individual dwelling units scattered throughout the areas served by county or regional authorities. Since, according to federal surveys, two out of three farm families in the United States are inadequately housed, the task of providing healthful farm housing assumes vast proportions. Nevertheless, by the end of the year under consideration, county and regional housing authorities in substantial number were making a real start on rural housing programs.[38]

Several states enacted legislation empowering county and other local housing authorities to provide safe and sanitary dwelling facilities for persons engaged in national defense activities.[39] Most of these laws, in defining "persons engaged in national defense activities," follow substantially the definition set forth in the Lanham Act of 1940[40] by which Congress made additional federal funds available to local housing authorities for defense housing. The federal act defines the term to include: (1) enlisted men in the naval or military services of the United States;[41] (2) employees of the Navy and War Departments assigned to duty at naval or military reservations, posts, or bases; and (3) workers engaged in industries connected with and essential to the national defense.

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[35] *General Acts and Resolutions of Florida*, 1941, p. 67; *Laws, Resolutions, and Memorials of Montana*, 1941, ch. 153; *Public Laws of North Carolina*, 1941, ch. 78; *Acts of West Virginia*, 1941, ch. 49.

[36] *Second Annual Report of the Federal Works Agency* (1941), pp. 165–166.

[37] *Session Laws of Washington*, 1941, ch. 69.

[38] *Second Annual Report of the Federal Works Agency* (1941), pp. 164–166. See *infra*, "Federal-Local Relations."

County powers in the field of public works were enlarged in several instances. Illinois and Wyoming authorized counties to establish and operate airports. County boards in Kansas were empowered, in drought emergencies, to purchase pumping equipment and operate drought relief wells. Bernalillo county (Albuquerque), New Mexico, was authorized to construct and maintain a county auditorium.[42]

County health and recreational activities continued to increase, and in several instances the statutory powers of counties to provide facilities in these fields were enlarged. The number of counties served by full-time health units was reported to have increased, since 1935, from 762 to 1,577.[43] Florida counties, and the county of Alamance in North Carolina, were empowered to establish and maintain public hospitals. The Delaware county of New Castle was authorized to provide ambulance service. Oregon provided that county lands may be set aside as forest, park, and recreational areas. St. Louis county, Missouri, was granted limited authority to acquire and maintain land for parks and playgrounds. Arkansas counties were empowered to operate recreation and playground programs.[44]

Several states enacted legislation under which counties will be able, in various ways, to foster agriculture and the conservation of natural resources. Colorado counties were empowered to engage in agricultural research work, and for that purpose to acquire land and laboratory facilities and employ necessary personnel. Texas counties were authorized to construct agricultural experiment stations, and to lease such stations to the state or to any agency of the federal government. Nebraska authorized the expenditure of county funds for the control and eradication of insect pests and plant diseases, and provided that counties may coöperate in control programs with appropriate state agencies or the United States Department of Agriculture. Florida provided that counties may acquire and protect forest lands; and Tennessee counties were authorized to coöperate with the state government in protecting forests from fire.[45] Wisconsin counties were empowered, in disposing of county-held real estate, to restrict the right of the grantee to cut timber from forested areas. Counties in Wisconsin's cut-over regions have acquired a great deal of land through tax-delinquency, and the 1941 act represents an experiment in controlling land-use and forestry practices thereon through deed restrictions.[46] Also deserving of mention as a conservation measure is an Idaho statute empowering counties to operate fish hatcheries.[47]

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[39] *General Acts and Resolutions of Florida,* 1941, p. 77; *Public Laws of North Carolina,* 1941, ch. 63; *Session Laws of Washington,* 1941, ch. 54; *Acts of West Virginia,* 1941, ch. 50. The acts provide that no projects may be initiated thereunder later than December 31, 1943.

[40] 54 *Stat. at L.* 1125.

[41] A 1942 amendment broadened this coverage to include commissioned officers of the lower ranks. *Public No. 409, 77th Congress.*

[42] *Laws of Illinois,* 1941, Vol. I, p. 463; *Kansas Session Laws,* 1941, ch. 6; *Laws of New Mexico,* 1941, ch. 101; *Session Laws of Wyoming,* 1941, ch. 35.

[43] Ira V. Hiscock, "Public Health Developments in 1941," *Municipal Year Book,* 1942, pp. 391–393.

[44] *Acts of Arkansas,* 1941, no. 291; *Laws of Delaware,* 1941, ch. 98; *General Acts and Resolutions of Florida,* 1941, p. 2386; *Laws of Missouri,* 1941, p. 480; *Public-Local Laws of North Carolina,* 1941, ch. 392; *Oregon Laws,* 1941, ch. 38.

Among the county zoning statutes enacted during the year, those relating to airport zoning were most numerous. States which conferred upon counties[48] power to impose zoning regulations for the protection of approaches to public airports, or which broadened existing authority of that nature, include Illinois, New Mexico, North Carolina, Tennessee, Wisconsin, and Wyoming.[49] The general purpose of these acts is to permit regulation of overhead power lines, trees, buildings, smokestacks, and other structures which might create hazards by obstructing the aërial approaches to the airport or by interfering with radio communication between airport and aircraft. The new zoning powers conferred by the Tennessee statute apply to areas adjacent or in proximity to federal-aid highways or public parks as well as to those in the vicinity of airports. Wisconsin, in addition to enlarging regulatory authority in airport areas, provided that counties may use the power of eminent domain to effect the removal of obstructions existing in such areas prior to adoption of regulatory ordinances.

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[45] *Laws of Colorado*, 1941, ch. 3; *General Acts and Resolutions of Florida*, 1941, p. 2380; *Session Laws of Nebraska*, 1941, ch. 48; *Public Acts of Tennessee*, 1941, ch. 106; *General and Special Laws of Texas*, 1941, p. 703.

[46] *Wisconsin Session Laws*, 1941, ch. 5; Robert M. Mangan, note in *National Municipal Review*, Vol. 30, pp. 656–657 (Nov., 1941).

[47] *General Laws of Idaho*, 1941, ch. 11.

[48] Massachusetts provided that towns may, in town meeting, adopt airport approach regulations subject to approval by the state aëronautics commission. *Annotated Laws of Massachusetts*, 1941 Supp., ch. 90, secs. 40A–40I.

[49] *Laws of Illinois*, 1941, Vol. I, p. 261; *Laws of New Mexico*, 1941, ch. 171; *Public Laws of North Carolina*, 1941, ch. 250; *Public Acts of Tennessee*, 1941, ch. 86; *Wisconsin Session Laws*, 1941, ch. 195; *Session Laws of Wyoming*, 1941, ch. 110. Wisconsin requires that zoning regulations be approved by the town boards of towns in which affected lands are situated, as well as by the county board.

Several of the enabling statutes follow rather closely the provisions of one or the other of the model airport zoning acts drafted by the Civil Aëronautics Administration and the National Institute of Municipal Law Officers,[50] both of which include counties among the local governmental units upon which zoning powers are to be conferred. The statutes which, like those of Illinois and New Mexico, are modeled after the Civil Aëronautics Commission Act, provide that a designated state agency shall formulate airport approach plans for the various airports, and make it the duty of the local governments to adopt and enforce such zoning regulations as may be necessary to give effect to those plans. On the other hand, statutes such as that of North Carolina, following the model of the law officers' institute, do not provide for this form of state supervision and control, but place zoning power and responsibility directly in the hands of the local authorities. Although most of the zoning acts apply only to publicly-owned airports, some apply to any airport used by the public, whether publicly or privately owned.

In addition to the airport zoning acts, there were a few statutes conferring planning and zoning powers of a more general nature. Oregon provided that county boards may zone unincorporated areas in coöperation with the state board of forestry. The counties of Ohio were empowered to regulate the erection, repair, and maintenance of non-farm residential buildings in unincorporated areas. Special acts authorized the establishment of planning commissions in certain counties in Missouri and Minnesota. Florida conferred zoning powers upon the counties of Martin and Indian River, and authorized Leon county to regulate billboards along highways.[51]

Although many of the functions already discussed relate directly or indirectly to national defense, special mention should be made of the work of county defense councils.[52] Duties assigned to such councils by the various statutes include coöperation with national and state agencies and with other local councils in carrying on defense activities; investigation of transportation, manufacturing, housing, fire protection, and other matters related to the defense effort; and recommendation of legislation designed to further national defense aims. The state statutes commonly confer upon local defense councils, in so far as they are applicable, the same powers within their respective jurisdictions as are vested in the state council with reference to the state at large. In practice, the local councils are performing a variety of functions, such as the promotion of salvage programs, the training of auxiliary policemen and firemen, and the instruction of civilians in methods of controlling incendiary fires.

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[50] Texts of the model acts may be found in *Journal of Air Law and Commerce*, Vol. 12, pp. 176–188 (Apr., 1941).

[51] *Special Acts of Florida*, 1941, pp. 901, 999, 1108; *Session Laws of Minnesota*, 1941, ch. 210; *Laws of Missouri*, 1941, pp. 465, 481; *Legislative Acts and Joint Resolutions of Ohio*, 1941, p. 673; *Oregon Laws*, 1941, ch. 360.

[52] See *supra*, "New Offices."

State legislatures continued to authorize counties to spend public funds, in limited amounts, for advertising purposes. Tennessee counties were empowered to make expenditures for the purpose of advertising their respective points of interest; Texas authorized any county of more than 100,000 population to make appropriations "for the purpose of advertising and promoting the growth and development of such county"; and Wake county, North Carolina, was empowered to make annual appropriations for advertising "its industrial opportunities, business facilities, and places of beauty and interest."[53]

Viewed as a whole, the list of new county services clearly reflects a nation girding itself for approaching conflict. Housing of military personnel and defense workers, construction of airports, public-health work, promotion of agriculture, conservation of forests, civilian defense—all of these activities are directly related to a defense economy. Current delegation of such functions to counties operates as legislative recognition of the continuing vitality of county government, and may well presage for the county a significant rôle in the national war and defense program.

Functional Consolidation. Many states enacted legislation authorizing local units of government to coöperate with each other in the performance of governmental services. While a few of these acts provided for the creation of special districts, the contract method of coöperation was distinctly prevalent. An amendment was proposed to the Georgia constitution which, if approved by the voters, will empower counties and other local units to contract with each other, for periods not exceeding thirty years, for the use of their respective facilities or services. Another instance of legislative action which contemplates coöperative performance of local services generally is seen in the statute establishing a form of manager government for Hamilton county, Tennessee. That act contains a broad provision authorizing the county council to contract with municipalities and other taxing units in the county for the consolidation of duplicating services and functions.[54]

As in former years, the greater part of the enabling legislation related to particular functions. No less than six states—California, Florida, Idaho, Montana, Oregon, and Washington—authorized counties to coöperate with municipalities in the construction and maintenance of airports. Some of these states also empowered adjoining counties to coöperate with each other for this purpose. Illinois provided that two or more contiguous counties, or contiguous parts thereof, may incorporate as an aviation district for providing airport facilities.[55] Florida and North Carolina authorized the formation of regional housing authorities embracing two or more counties; and West Virginia provided that any two or more local housing authorities, county or city, may join or coöperate in the exercise of their powers. Ohio enabled any county to contract with any municipality therein for the purpose of providing that either unit shall administer and enforce the building regulations of the other. Township boards in Michigan were empowered to enter into contracts with municipalities or water districts to secure water for domestic use and fire protection in rural areas. Kansas, which for some years has permitted entire counties to abandon township road maintenance in favor of the county-unit plan, provided that henceforth county boards may, at the request of individual townships, maintain township roads therein at township expense. California enabled contiguous counties in certain coastal areas to join in the formation of harbor districts.[56]

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[53] *Public-Local Laws of North Carolina*, 1941, ch. 390; *Public Acts of Tennessee*, 1941, ch. 21; *General and Special Laws of Texas*, 1941, p. 905.

[54] *Acts and Resolutions of Georgia*, 1941, p. 50; *Private Acts of Tennessee*, 1941, ch. 156.

Arkansas counties, cities, towns, and school districts were authorized to enter into coöperative agreements for the operation of programs of public recreation and playgrounds. An Iowa statute provided that county boards of adjoining counties may enter into agreements whereby indigent residents of one county will be supported in the county home of the other. Contiguous townships in any Ohio county, and any two or more of a designated group of New York towns, were empowered to coöperate in the establishment of joint hospital districts. County boards in Colorado were authorized to enter into coöperative agreements for carrying on agricultural research. California provided that the board of supervisors of any county having no county agricultural commissioner may, with the consent of the board of supervisors of an adjoining county, employ the commissioner of such adjoining county to have charge of its department of agriculture.[57] North Carolina, by special acts, authorized various counties to join with designated cities therein in the administration of specified activities.[58]

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[55] *Statutes of California*, 1941, ch. 265; *General Acts and Resolutions of Florida*, 1941, p. 2316; *General Laws of Idaho*, 1941, ch. 103; *Laws of Illinois*, 1941, Vol. I, p. 254; *Laws, Resolutions, and Memorials of Montana*, 1941, ch. 54; *Oregon Laws*, 1941, ch. 189; *Session Laws of Washington*, 1941, ch. 21.

[56] *Statutes of California*, 1941, ch. 1117; *General Acts and Resolutions of Florida*, 1941, p. 67; *Kansas Session Laws*, 1941, ch. 319; *Public Acts of Michigan*, 1941, no. 47 (see also *ibid.*, no. 107); *Public Laws of North Carolina*, 1941, ch. 78; *Legislative Acts and Joint Resolutions of Ohio*, 1941, p. 673; *Acts of West Virginia*, 1941, ch. 49.

[57] *Acts of Arkansas*, 1941, no. 291; *Statutes of California*, 1941, ch. 1077; *Laws of Colorado*, 1941, ch. 3; *Acts and Joint Resolutions of Iowa*, 1941, ch. 151; *Laws of New York*, 1941, ch. 741; *Legislative Acts and Joint Resolutions of Ohio*, 1941, p. 354.

Interest continued in coöperative performance of the auxiliary administrative services of personnel and purchasing. The statute providing an optional civil service system for Wayne county, Michigan, would enable that county to make the services of its personnel-administration facilities available to adjoining counties under contract. Minnesota's optional civil service law for Ramsey county empowers the county to contract with St. Paul for the services of the city's civil service bureau. New York provided that, in counties having county civil service commissions, cites may elect to have their merit systems administered by the county commission.[59] Pennsylvania amended an act of 1937 authorizing joint purchasing by certain local governmental units, to extend its provisions to second-class counties (Allegheny), cities of the second class, and institution districts.[60]

IV. FINANCE

County and town budgeting made some progress during the year. Wisconsin's law requiring local budgets was amended to include counties having a population of less than 300,000; and New York's local budget system was extended to all towns.[61] Special legislative acts established budget systems in Rensselaer county in New York, St. Louis county in Minnesota, and five Tennessee counties.[62] The law providing a manager system for Hamilton county in the latter state requires the manager to prepare an annual budget; as do the optional manager laws enacted in North Dakota.[63] Nebraska's county budget law, which became effective in 1938, was reported to be operating in such manner as to place counties on a sound business basis, improve the public service, and reduce costs to taxpayers.[64]

The Washington legislature provided for submitting to popular referendum in 1942 a statute imposing a 40-mill over-all rate limit on property taxes, with the provision that property shall be assessed at 50 per cent of its true value. Under the proposed statute, counties would be made subject to a 10-mill limit within the over-all maximum. This maximum county rate, however, like the maximum rates prescribed for other classes of local units, might be exceeded by three-fifths vote at a special referendum election. Pennsylvania inaugurated an instalment system for payment of delinquent taxes, and abated penalties and interest thereon. North Dakota authorized county boards to exchange lands acquired for taxes for other lands in the county.[65]

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[58] For example, *Public-Local Laws of North Carolina*, 1941, ch. 1 (recreation system by New Hanover county and the city of Wilmington), 230 (tax collection by Forsyth county and city of Winston-Salem), 262 (police radio and identification bureau by Buncombe county and city of Asheville).

[59] *Public Acts of Michigan*, 1941, no. 370; *Session Laws of Minnesota*, 1941, ch. 513; *Laws of New York*, 1941, ch. 885. See *supra*, "Personnel Administration."

[60] *Laws of Pennsylvania*, 1941, no. 224.

[61] *Laws of New York*, 1941, ch. 601; *Wisconsin Session Laws*, 1941, ch. 221.

[62] *Session Laws of Minnesota*, 1941, ch. 118; *Laws of New York*, 1941, ch. 917; *Private Acts of Tennessee*, 1941, chs. 124 (Chester), 272 (Dyer), 375 (Overton), 377 (Jackson), 441 (Hancock).

[63] *Laws of North Dakota*, 1941, chs. 131, 132; *Private Acts of Tennessee*, 1941, ch. 156. See *supra*, "County and Town Executives"; *infra*, "Optional Charters and Home Rule."

[64] W. L. Pierpoint, note in *National Municipal Review*, Vol. 30, pp. 52–53 (Jan., 1941).

Centralized purchasing agencies were established or authorized in the counties of Dyer, Putnam, and Tipton in Tennessee; Vanderburgh in Indiana; and Fulton in Georgia. Under the statute establishing a manager form of government in Darlington county, South Carolina, supplies and equipment will be purchased by the manager under regulations prescribed by an advisory commission. North Dakota's two optional manager laws provide for centralized purchasing. Under the straight manager form, the director of finance, and under the "short" form of managership the manager himself, is to act as or appoint a county purchasing agent.[66]

V. OPTIONAL CHARTERS AND HOME RULE

The most comprehensive legislation of the year concerning optional forms of county government was enacted by North Dakota. A constitutional amendment ratified by the voters of that state in 1940 makes it the duty of the legislature to provide optional forms of county government, at least one of which shall provide for a county manager. In obedience to this mandate, the 1941 legislative session enacted a series of three optional-government statutes providing a like number of alternative forms of county governmental organization. These forms are officially designated: (1) the Consolidated Office Form; (2) the County Manager Form; and (3) the Short Form of County Managership.[67] Every county in the state is free to retain its existing form of government or to adopt any of the three new forms. A proposal to adopt the Consolidated Office Form is initiated by petition signed by 40 per cent of the number of voters in the last gubernatorial election. The manager plans may be initiated either by petition of 35 per cent of the number of voters in the gubernatorial election or by majority vote of the county board. Adoption of any plan requires a 55 per cent affirmative vote of those voting on the question in the primary or general election at which the question is submitted.

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[65] *Laws of North Dakota,* 1941, ch. 126; *Laws of Pennsylvania,* 1941, nos. 17, 18; *Session Laws of Washington,* 1941, ch. 176.

[66] *Acts and Resolutions of Georgia,* 1941, p. 408; *Laws of Indiana,* 1941, ch. 23; *Laws of North Dakota,* 1941, chs. 131, 132; *Acts and Joint Resolutions of South Carolina,* 1941, p. 54; *Private Acts of Tennessee,* 1941, chs. 273, 373, 518.

[67] *Laws of North Dakota,* 1941, chs. 130, 131, 132. Further discussion of the statutory provisions may be found in Ernest Engelbert, "A Decade of County Government Reorganization in North Dakota," in this REVIEW, Vol. 36, pp. 508–515. See also Elwyn A. Mauck, note in *National Municipal Review,* Vol. 30, pp. 301–303 (May, 1941); *supra,* "Office Consolidation."

The Consolidated Office Form provides for a substantial degree of administrative centralization, though less than do the manager plans. The county board becomes the sole elective agency of the county and appoints the auditor, state's attorney, sheriff, treasurer, superintendent of schools, coroner, four justices of the peace, and four constables. The auditor is designated as "chief administrative officer of the county" and, in addition to his duties as auditor, serves *ex officio* as county judge, register of deeds, and clerk of the district court. The offices of public administrator and county surveyor are abolished.

Under the County Manager Form, the county board appoints a full-time manager who serves for an indefinite term and is removable at the pleasure of the board. The manager is vested with the usual managerial powers, including appointment of department heads and subordinate personnel, supervision of county activities, and preparation of the budget. Departments of finance, public works, and public welfare are established by the statute; and additional departments may be created by the county board upon recommendation of the manager. The offices of sheriff, superintendent of schools and county judge continue to be filled by election. Other elective offices are abolished and their duties reassigned.

The Short Form of County Managership differs from the regular county manager form principally in the fact that the departmental set-up is omitted, with the manager being given broad powers over structural organization and staff. The manager is in direct charge of financial administration, public works, and welfare activities. In addition, he is charged with performing the duties of several specified county offices and may, at his discretion, assume the duties of certain others. The county judge and superintendent of schools remain elective.

New York's Desmond-Mailler optional county government law of 1937 was changed to bring its provisions into conformity with state constitutional changes of 1938.[68] Under the amendatory act of 1941, the requirement that adoption of an optional form of government be approved by municipalities within the county, as well as by the county as a whole, applies only when a transfer of functions as between the county and municipalities is involved. Where there is no transfer of functions, an alternative form may be adopted by simple county-wide majority vote.[69] A proposed amendment to Nebraska's constitution would enable the legislature to provide an optional county-manager law.[70] The Wisconsin legislature, on the other hand, failed to give second legislative approval to a proposed constitutional amendment[71] which would have abolished the requirement of uniformity in county government, permitting a statutory classification of counties and the provision of optional systems of government.

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[68] *Laws of New York*, 1941, ch. 190; G. H. H., Jr., note in *National Municipal Review*, Vol. 30, pp. 372–373 (June, 1941). See this REVIEW, Vol. 32, p. 952; Vol. 33, pp. 1068–1069.

In Ohio, the voters of Cuyahoga county (Cleveland) again defeated a proposal to elect a commission to draft a new charter under the constitutional home-rule amendment of 1933. No Ohio county has yet been able to draft, under that amendment, a charter capable of securing approval of both the voters and the courts; nor has the state legislature yet provided optional forms of county government as authorized by the amendment.[72]

VI. INTERGOVERNMENTAL RELATIONS

State-Local Relations. There were no new developments of major significance in state-local relations. In general, the trend toward increased state control and assistance continued, though there was less legislation pertaining to the state-local relationship than in most legislative years. New Jersey increased the authority of her local government board with respect to governmental units in unsound financial condition. Additional powers conferred upon the state agency over local governments in serious financial straits include those of supervising the assessment and collection of property taxes, and requiring the selection of a local administrator of finance who, under the board's direction, may exercise broad supervisory authority over the unit concerned.[73] State oversight of local budgeting was widespread, no fewer than thirty-seven states being reported as exercising some degree of supervision over county budgets.[74]

The states which provided for local defense councils generally made it the duty of such local organizations to coöperate with the state council of defense. Some of the airport zoning statutes made it the duty of counties and other local units, in regulating airport approaches, to give effect to plans formulated by state agencies.[75] New York, in requiring inauguration of the merit system in all local governmental units, provided that the state civil service commission shall, upon request, prepare examinations and establish eligible registers for, and supply technical advice and assistance to, local civil service commissions.[76] Washington established a state division of flood control empowered to supervise the work of local flood control engineers in the various counties; and Tennessee empowered counties to coöperate with the state forestry division in providing fire protection for forests.[77]

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[69] Another New York optional county government statute—the Fearon-Parsons law—was similarly amended in 1940. See this REVIEW, Vol. 35, p. 1114.

[70] *Session Laws of Nebraska*, 1941, ch. 46. See *supra*, "County and Town Executives."

[71] See this REVIEW, Vol. 34, p. 1162.

[72] Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 30, pp. 177, 658 (Mar., Nov., 1941). See this REVIEW, Vol. 31, p. 907; Vol. 34, pp. 1162–1163.

[73] John H. Marion, "State Supervision in New Jersey over Municipalities in Unsound Financial Condition," in this REVIEW, Vol. 36, pp. 502–508 (June, 1942). As to general powers of the local government board, see this REVIEW, Vol. 33, pp. 1065–1066; Vol. 35, p. 1117.

[74] A. E. Buck, "Municipal Budgeting," *Municipal Year Book*, 1942, pp. 271–274.

Federal-Local Relations. Most of the developments in federal-local relationships concerned matters related directly or indirectly to problems of defense. Washington and Iowa empowered counties to convey county property to the federal government for defense purposes; and Indiana authorized township trustees to make similar conveyance of school property. Missouri provided that counties and other political subdivisions in certain defense areas may contract to operate for the federal government sewerage, water-supply, and hospital facilities serving military establishments. Counties in Arizona, Idaho, Oregon, and Washington were empowered to enter into agreements with federal agencies for coöperation in the construction and maintenance of airports. Oklahoma and Texas provided that counties may acquire airport facilities and lease the same to the federal government. Sedgwick county (Wichita), Kansas, was authorized to acquire and donate to the federal government land for aircraft supply and repair depots.[78] Congressional enactments during the year provided additional federal funds in aid of the construction and improvement of publicly-owned airports and landing fields in defense areas.[79] The several state statutes providing for county defense councils[80] envisaged coöperation of the local councils with the federal Office of Civilian Defense as well as with the respective state councils. In practice, the federal agency has set up standards for the training and certification of local defense personnel; and, through the state councils, supplied the local organizations with handbooks and other instructional literature.

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[75] See *supra*, "New Offices," "New Functions."

[76] *Laws of New York*, 1941, ch. 885. See *supra*, "Personnel Administration."

[77] *Public Acts of Tennessee*, 1941, ch. 106; *Session Laws of Washington*, 1941, ch. 204.

[78] *Acts, Memorials, and Resolutions of Arizona*, 1941, ch. 5; *General Laws of Idaho*, 1941, ch. 103; *Laws of Indiana*, 1941, ch. 21; *Acts and Joint Resolutions of Iowa*, 1941, ch. 194; *Kansas Session Laws*, 1941, ch. 16; *Laws of Missouri*, 1941, p. 493; *Harlow's Session Laws of Oklahoma*, 1941, p. 60; *Oregon Laws*, 1941, ch. 189; *General and Special Laws of Texas*, 1941, p. 196; *Session Laws of Washington*, 1941, chs. 21, 227.

[79] See Roy H. Owsley, "Federal-City Relations in 1941," *Municipal Year Book*, 1942, pp. 204–216.

[80] See *supra*, "New Offices."

Federal subsidization of local housing continued, with growing emphasis upon farm housing. By June 30, 1941, the United States Housing Authority had entered into actual loan contracts with 32 county housing authorities for the construction of 2,820 farm dwellings, while plans and the earmarking of federal funds were under way for a much more extensive program.[81] "Although its limited funds permit only a modest beginning, the USHA through its rural housing program is pointing a way to the rehousing of the several million American farm families now living in rural slums."[82]

There was a continuation of the now well-recognized tendency toward increased federal-local coöperation in matters relating to agriculture and conservation. Nebraska empowered counties to coöperate with the federal government in controlling insect pests and plant diseases; Texas provided that agricultural experiment stations constructed by counties might be leased to federal agencies; and Colorado authorized counties to coöperate with federal research agencies in agricultural research work.[83] Local soil conservation districts continued to receive federal assistance, the United States Department of Agriculture having entered into memoranda of understanding with 650 such districts by June 15, 1942.[84]

Problems arising from the exemption of United States property from local tax jurisdiction continued to receive legislative attention. Counties of Kansas, Michigan, and Missouri were authorized to enter into agreements with the United States, on behalf of the counties themselves and political subdivisions therein, whereby the federal government would make payments in lieu of taxes for local governmental services rendered to federal resettlement and rural rehabilitation projects. Montana's legislature, pointing out that exemption of national forests and other nationally-owned lands from state and local taxes has resulted in several counties of that state in oppressive taxation of privately-owned property, memorialized Congress to enact corrective legislation.[85]

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[81] *Second Annual Report of the Federal Works Agency* (1941), pp. 164–166, 394–395.

[82] *Ibid.*, p. 166. See *supra*, "New Functions."

[83] *Laws of Colorado*, 1941, ch. 3; *Session Laws of Nebraska*, 1941, ch. 48; *General and Special Laws of Texas*, 1941, p. 703. See *supra*, "New Functions."

[84] Data supplied by Soil Conservation Service, U. S. Department of Agriculture. See *supra*, "Areas."

[85] *Kansas Session Laws*, 1941, ch. 202; *Public Acts of Michigan*, 1941, no. 318; *Laws of Missouri*, 1941, p. 490; *Laws, Resolutions, and Memorials of Montana*, 1941, p. 447.

The Community of the Parliaments of the British Commonwealth. When Nazi planes, on the night of May 10, 1941, bombed the rooms of the Empire Parliamentary Association in Westminster Hall in the Houses of Parliament, they struck at a central institution of the British Empire. Fire destroyed most of its records. Fire-blackened, water-soaked documents, annual reports, verbatim reports of annual meetings and of sessions of the Empire Parliamentary Conference, and other documents, all bearing marks of that night, have formed the basis of this article, which incorporates also the experience gained from personal contacts with the Association in most parts of the Empire, including the addressing of meetings of members in the parliaments of each of the Oversea Dominions and attendance at meetings of the Empire Parliamentary Conference.

The Association originated in a suggestion made in 1911 by the Rt. Hon. L. S. Amery, M.P., who has played a greater part in its history than any other man apart from its Secretary, Sir Howard d'Egville. Mr. Amery proposed that "His Majesty's faithful Commons from each part of the Empire should, by delegations of their Members, be present at the Coronation"[1] of 1911. From this "historic assembly of Members of the Imperial Parliament and Members of the Parliaments of the Dominions," as the constitution of the Association records, was born the permanent institution. Sir Howard d'Egville is named in the constitution as "the founder and organiser of the Association," and his contribution in the thirty-one years of its existence makes him one of the real founders of the modern British Commonwealth of Nations.

For a generation, the Association has been "the centre of the Parliamentary intercourse of the Empire."[2] If it is unknown to the British statute-book, so were until 1937 the cabinet, the prime minister, the leader of the Opposition, and the political party. The building in which its headquarters are situated—Westminster Hall, the Hall of William Rufus and of Simon de Montfort's Parliament of 1265—is "sacred ground . . . the nursery of the English Common Law and the nursery of our Parliament."[3] Here for a generation the Association, acting through its branches in all parts of the Empire, has carried out its task of keeping "the Parliamentary tradition united and alive in all the Dominions under the British Crown."[4]

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[1] *Empire Parliamentary Conference, Visit to the United Kingdom, Jubilee Year 1935, E.P.A.* (London, 1935), p. 101.

[2] *Annual Report of the Executive Committee of the Empire Parliamentary Association (United Kingdom Branch) for the Year 1917–18,* p. 3. (Hereafter referred to as *A.R.*, 1917–18, etc.)

[3] The Prime Minister (Mr. Stanley Baldwin)—*The Empire Parliamentary Conference . . . Jubilee Year,* 1935, p. 97.

[4] L. S. Amery, *Report of Proceedings at the Annual Meeting of the U.K. Branch, 1919* (hereafter referred to as *A.M.*, 1919, etc.).

Its great achievement was that it trained men of all parties and parliaments of the Empire to feel: "We are Parliamentarians."[5]

The subtle transformation of an Empire of law and "parchment bonds" into one in which "other forces far more compulsive" (in Winston Churchill's words) are given free play, has been little understood, either by the democracies or by the Axis countries. Both have fastened their attention too exclusively on superficial things such as the weakening of legal ties by the Statute of Westminster. The Empire has been transformed by the process of "bringing together, in harmony and mutual service, the personnel of the Empire"[6]—cabinet ministers, parliamentarians, government officials, and others. The pressure of external danger and revolutionary changes in communication, especially Empire broadcasting, have strengthened the family bonds which are the real secret of the Empire's strength. The peoples of the Empire have become more one people by a process of identification through the person of the King and the symbol of the Crown.[7] Fourteen years ago an ex-Labor prime minister made a forecast which events have not altogether belied: "His Majesty and this Association will be the great bonds of Empire."[8]

The main object of the Empire Parliamentary Association as stated in Article I of its constitution is "the establishment of permanent machinery to provide more ready exchange of information and to facilitate closer understanding and more frequent intercourse between those engaged in the Parliamentary Government of the component parts of the Empire."[9]

The present membership of the Association is 2,822—684 in the United Kingdom and 2,138 in oversea branches. There are 33 branches in 33 parliaments and legislatures of the Empire;[10] and some of the branches have at times included all members of both houses of parliament. Not all are full branches of the Association. An amendment of its constitution in 1924–25 made possible the creation of branches affiliated to the branches of the Association in the United Kingdom or Dominion parliaments. This admitted colonies such as Bermuda (which possess ancient legislatures and considerable powers of self-government), as well as the state and provincial parliaments of Australia and Canada.[11]

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[5] L. S. Amery: *E.P. Conference . . . Jubilee Year*, 1935, p. 101.

[6] *A.M.*, 1915, p. 8.

[7] For an analysis of all these factors, see W. Y. Elliott and H. Duncan Hall (eds.), *British Commonwealth at War* (New York, 1942), Chap. 2.

[8] Ramsay Macdonald, *A.M.*, 1928, p. 9.

[9] *Constitution of the Empire Parliamentary Association*, issued by the United Kingdom Branch, London, p. 5.

[10] The branches are: United Kingdom; Northern Ireland; Isle of Man; Dominion of Canada (and eight affiliated branches in Canadian provinces); Commonwealth of Australia (and six affiliated branches in the Australian state parliaments); New Zealand; South Africa; Eire; India (Central Legislature and Province of Bengal); Southern Rhodesia; Malta; Bahamas; Barbados; Bermuda; Ceylon; Jamaica; Mauritius; British Guiana.

Like the Empire, the Association has no centralized organs. The branch in the British Parliament is merely a branch equal in status to the Dominion branches. The constitution is an agreed Empire document which can be amended only by common consent.[12] The word "Association" indicates the voluntary character of the organization, and its lack of power to take binding decisions. It is the custom of the Association and the Empire Parliamentary Conference not to adopt resolutions. Yet despite the modesty of its title, it is a far more representative and official body than any organization of parliamentarians that has so far existed on an international scale. It is the only organized and lasting international community of parliamentarians that has ever existed. Though it has become a central institution of a great self-governing Empire, it has avoided publicity so successfully that no account of any kind based on official records of its history and work has hitherto been published.

Membership in the Association is secured automatically without election through membership in a branch. The parliamentary community is extended to past members of Parliament by the provision that they may become "affiliated members" of the Association with limited privileges under conditions determined by a branch. (*Constitution*, Art. IV.)

The Association and its branches are organically related to the parliaments in a number of ways. "The Headquarters of each Branch of the Association are situated in the respective Houses of Parliament";[13] and here, too, are held sessions of the Empire Parliamentary Conference and all other meetings. Permanent officers of the parliaments—the clerks of the two houses—except in the case of the United Kingdom branch, supply the secretariat of the branches; and they come together to form a joint secretariat of the Empire Parliamentary Conference.[14] "The Presidents of the Branches in the Parliaments of the United Kingdom and the Dominions are the Speakers of the two Houses of Parliament and the Vice-Presidents are the Leaders of the Parties in the Parliaments."[15] Speakers and deputy speakers take part in the Empire Parliamentary Conference, and fifteen participated in 1937. The expenses of the branches of the Empire Parliamentary Conference and of the publications of the Association are defrayed in part from grants voted annually by the parliaments.[16]

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[11] *Constitution*, Art. V; *A.R.*, 1925–26, p. 22.

[12] *A.M.*, 1925, p. 21.

[13] *A.R.*, 1917–18, p. 4.

[14] *Constitution*, p. 3; *Reports of the Proceedings of the Empire Parliamentary Conference*, 1935; 1937.

[15] *Constitution*, p. 2.

[16] The close relation of the Association to the parliaments is shown by the fact that the Speaker's chair in the Canadian and Australian parliaments is a gift from the U.K. Branch. The chairs are replicas of the Speaker's chair in the House of Com-

The Association carries out its object of facilitating "closer understanding and more frequent intercourse" between the parliamentarians of the Empire in various ways. In the words of its constitution, it is "a society of mutual assistance," providing for its members many facilities and privileges.

When a session of the Empire Parliamentary Conference takes place, "the inviting country by a vote of Parliament bears the whole of the expenses not only of hospitality in the country but also of transport, outgoing and return, of each Delegate from each Parliament;"[17] each delegate is thus placed on a footing of complete equality irrespective of his means. Individual members visiting a country receive important travel concessions. Parliamentary privileges mean, in the case of the British Parliament, access to the Dominions' Gallery, the Members' Lobby, the Strangers' Dining and Smoking Rooms, the Library, the Terrace of the House of Commons, and also access to the House of Lords. In Great Britain, visiting members receive invitations to functions open to a select few, the King's Garden Party, the Opening of Parliament, the Prime Minister's Reception, the Trooping of the Colour, and a number of others. The Dominions and India give corresponding privileges where possible. The visiting member meets leading personalities in innumerable social functions. As delegate to a Conference, he is taken to see the historic centers of the country. The Coventry that was blasted in 1940 was the Coventry he had visited in 1935 as a guest of the British Parliament.

The volume of this "continuous stream of intercourse between members of Parliament" has steadily increased. The number of oversea members visiting the British Parliament in various years was: 1912–13, 23; 1913–14, 44; 1914–15, 37; 1917–18, 60, 1921–22, 67; 1925–26, 188; 1929–30, 205 from 18 branches; 1931–32, 259 from 27 branches; 1933–34, 159 from 24 branches; 1935–36, 245 from 24 branches; 1937–38, 328 from 26 branches. The number of members of the U.K. branch visiting the oversea branches each year ran to several score. This constant movement of parliamentarians round the Empire is cumulative in its effect. Almost every member of the parliaments of the Empire has met many visiting parliamentarians and has attended an Empire Parliamentary Conference; and a considerable number of members have visited all the principal parliaments and countries of the Empire.

The Empire Parliamentary Conference was created by the Association.

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mons and contain wood from the famous roof of Westminster Hall. *A.R.* 1919–20; see *A.R.* 1917–18. Stonework from the British Houses of Parliament is incorporated in a number of Oversea Houses of Parliament. *A.M.*, 1938, p. 5.

[17] *A.R.*, 1929–30, p. 4. Also *Proceedings of the Empire Parliamentary Conference*, 1935, p. 256. Travel privileges are usually extended to wives and members of families.

After the First World War it became a fixed aim of the branches to arrange a full conference of delegations from the parliaments of the Empire "to visit one or other of the countries of the Empire at least once in every two years."[18] A delegation of 16 members of the U.K. branch visited Australia in 1913, as guests of the Australian branch, and conferred *en route* with each of the Dominion branches. The Empire Parliamentary War Conference in London in 1916 was an important event. A British parliamentary delegation visited South Africa in 1924. A full Conference was held in Australia in 1926; "For the first time in the history of the British Empire, Conferences of Representatives of all Parties in all Parliaments upon many matters of vital interest to the nations of the British Commonwealth have taken place in an Oversea country." A similar General Conference was held in Canada in 1928, and several smaller conferences in the thirties were linked with the centenaries of various Australian colonies.[19] There was not a year in the twenty years after the war in which an Empire Parliamentary Conference of some kind, formal or informal, was not going on somewhere in the Empire.

The goal, already foreshadowed in 1920,[20] of an annual assembly of parliaments was furthered by the decision of the Conference of 1935 to hold an informal meeting in London in years in which there were no "plenary sessions of the Empire Parliamentary Conference." An "Informal Meeting of the Empire Parliamentary Conference" was thus held in July, 1936, and again in July, 1939. The first (attended by 15 oversea members from all the Dominions and India, and 66 United Kingdom members) was devoted to "Sea Power and the British Commonwealth of Nations." The second (attended by 24 oversea and 49 United Kingdom members) dealt with "The Coördination of Defense in United Kingdom and Overseas Aspects." Both discussions, of which printed verbatim private reports exist,[21] helped to prepare the British democracies to face the coming war.

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[18] *A.R.*, 1929–30, p. 3. An indication of the great interest taken after the war in Empire Parliamentary Conferences was the fact that in 1926 the United Kingdom branch had before it invitations to send delegations to Australia, New Zealand, Canada, South Africa, Newfoundland, Malta, Southern Rhodesia, and India.

[19] *A.R.*, 1926–27, p. 4. See also *ibid.*, 1925–26, p. 25. Minor conferences were held at various times in India, Newfoundland, Malta, South Australia, New South Wales, and New Zealand. Visits by parliamentary delegations from the U.K. Branch were made to various parts of the Empire such as Bermuda, Nigeria, and Tanganyika. A small all-party parliamentary delegation from Canada visited Great Britain in October, 1941, and *en route* had an informal conference with members of the Congress in Washington (*A.R.*, 1939–41). A South African parliamentary delegation came later in the year to London. Further visits of parliamentary delegations are being arranged, and it is hoped to have a session of the plenary Empire Parliamentary Conference.

[20] H. Duncan Hall, *The British Commonwealth of Nations* (1920), pp. 309–10.

The culminating point so far in the development of the Empire Parliamentary Conference was reached in the two great conferences in London on the occasion of the King's Jubilee in 1935 and on the eve of the Coronation of 1937. By that time the parliamentary conferences had come to be looked upon, not as sporadic meetings, but as sessions of a permanent institution. The Conference of 1935 was attended by 49 oversea delegates and 103 from the United Kingdom. The delegations, each elected as is customary by its branch, included 16 speakers, premiers, or ministers. The Conference of 1937 was composed of 61 delegates from 28 oversea branches and 134 from the U.K., and the delegations contained 7 premiers, 25 ministers, 15 speakers or deputy speakers, and 8 leaders or deputy leaders of the Opposition, as well as former holders of all these offices.[22] The Conferences, of which printed but unpublished verbatim records exist,[23] covered *inter alia* foreign affairs and defense, shipping and communications, Empire trade, migration, finance, agriculture, and "The Future of Parliamentary Government."

Leaders of the Opposition (who are not present at Imperial Conferences) were delegates to these two Parliamentary Conferences. This helped to ensure greater continuity of policy in defense, foreign affairs, and Empire matters in the various parts of the Empire.[24] A further important constitutional innovation, was the creation of an organic link between the Conference of Parliaments and the Imperial Conference of Governments. For the first time, the Empire Parliamentary Conference was held on the eve of the Imperial Conference, thus linking "the Parliamentary discussions with the subsequent Governmental discussions." The heads of Dominion parliamentary delegations were also delegates to the Imperial Conference; and "practically all of the Ministers of the United Kingdom who presided over or opened discussions at the Parliamentary Conference similarly took part in the proceedings of the Imperial Conference."[25]

Like the Imperial Conference, the Empire Parliamentary Association has been associated from the beginning with important events in the history of the Crown. The relations of parliaments and parliamentarians with the Crown and the person of the king became still closer at the Conferences of 1935 and 1937. "For the first time in history the King-Emperor met and addressed on 7th May, 1937, the elected representatives of his 400,000,000 subjects throughout the world."[26] The occasion was a luncheon in Westminster Hall. Then, as at the similar function in 1935, the Speaker of the House of Commons referred to the Empire as a family. "Today," he said in 1935, "you are more than Sovereign. You are Head of the Family, and of a Nation and an Empire; you have made a Household;" and the loyal toast moved by him was to "The Head of the Family —His Majesty the King."[27] This language, of which the records of Empire gatherings ever since the Colonial Conference of 1887 are full, brings us to those "other forces, far more compulsive," referred to above. The greatest contribution of the Association has been in the sphere of psychological relations. Its leading members realized that what mattered to the Dominions far more than mere legal and constitutional equality was their human status in the family, that oversea members wanted to be treated as adult members of the family council, not to be regarded as strangers or tourists left standing in the cold, but to have free admission as equals into the warmth of the inner circles of the life of the Mother Country. The speaker of the Western Australia House put it thus: "You have no idea how nice it is to feel that there is a spot in the House of Commons where we have a right to come in . . . We come to London as strangers . . . we feel lonely . . . until you come into this room, and then immediately you feel you are in the family."[28]

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[21] *Informal Meeting of the Empire Parliamentary Conference. Report of Proceedings, July, 1936; ibid., July, 1939.*

[22] *A.R.*, 1937–38, pp. 2–3.

[23] *Conference of Delegates of the Empire Parliamentary Association from the Legislatures of the Empire, Report of Proceedings, London, 1935; Empire Parliamentary Conference, Report of Proceedings, London, 1937.*

[24] *A.M.*, 1938, p. 8.

[25] *A.R.*, 1937–38, p. 10. The British Prime Minister commended this innovation, *A.M.*, 1938, pp. 12–13.

It was because of such all-important psychological factors as these that Winston Churchill said in 1921: "It is impossible to overrate the importance of a piece of mechanism such as this in the structure of our Imperial organization."[29] Before its creation, he pointed out, visiting statesmen from oversea had gone back with a feeling of frustration and detachment from the family. "Now," he said, "they come here as of right; they take their place in our midst and enter into our affairs." It was an "enormous benefit" for members of the House of Commons to have a "similar recognized official position" when in the Dominions.

Other important results flowing from these massive personal relations between the parliamentarians of the Empire were that these men grew to know the British Commonwealth as a whole, to understand its place in world affairs, and to feel "a wider patriotism" extending to the whole

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[26] *Visit and Conference of Delegates of the Empire Parliamentary Association from the Oversea Legislatures of the Empire . . . Coronation, 1937*, E.P.A. (London, 1937), p. 34.

[27] *E.P. Conf. Jubilee Year*, etc.; *ibid., Coronation*, 1937, p. 40.

[28] *Proceedings: Informal Meeting of the E.P. Conference, 1939*, p. 52.

[29] *A.M.*, 1921, p. 7. For similar views expressed by A. J. Balfour and others, see *A.R.*, 1913, pp. 15, 23, 25; *A.M.*, 1917, p. 11.

Empire.[30] It is only when account is taken of the work of the Association that we can fully explain the extraordinary unanimity of the parliaments of Britain, Canada, Australia, and New Zealand on the necessity of their countries entering the war, and the rapid decision of South Africa to take, and to remain steadfast in, the same course despite the opposition of a substantial minority. The machinery of the Empire worked because parliamentarians, ministers of the Crown, and leading officials had met so early, worked together on common tasks, knew each other so well, and saw each other so often.[31]

Since the United States and the British Commonwealth have an immense common interest in parliamentary institutions and the parliamentary spirit, the importance of close contact between their parliamentarians is obvious.[32] It may well be that in the near future, as a result of discussions begun in Washington, the first inter-parliamentary conference of the English-speaking peoples will become a possibility;[33] and this may open a new chapter in the history of the Empire Parliamentary Association.

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[30] Mr. A. J. Balfour, *A.M.*, 1913, p. 25; *A.M.* 1919, p. 6; See also *A.R.* 1926, p. 8. Study Circles on Foreign Affairs, etc., in the different branches have helped to develop "a common outlook based on common knowledge." Also serving this purpose are the main publications of the Association, jointly financed by the parliaments of the Empire and edited by Sir Howard d'Egville, the *Report on Foreign Affairs* (bimonthly, now quarterly) and the quarterly *Journal of the Parliaments of the Empire.* The latter contains a summary of all the main parliamentary debates, as well as important bills and acts, for the whole Empire. It is the common organ of the parliamentarians of the Empire, pools knowledge and experience, and promotes uniformity in legislation in matters of national as well as international concern. The issuing of a separate publication containing summaries of the principal debates of Congress has been approved by the Executive Committee of the United Kingdom branch. *A.R.* 1939–41.

[31] See the discussion in the *Informal Meeting of the E.P. Conference,* 1935, pp. 22–23, 26, 36.

[32] See speech by the Lord Chancellor, *A.R.*, 1920–21, p. 10.

[33] See *A.R.*, 1939–41, "Relations with Congress of the U.S.A."

Democracy and International Organization: The Experience of the League of Nations. The relationship between the domestic political philosophy of a state and its reliability as a member of an organized world community is one of the more hotly debated issues in the present discussion of future international organization.[1] On one side of the argument is the school of thought which holds that international organization can be safely erected only upon a basis of solidly democratic states. On the other side is the school which denies that there is any such close connection between the internal political organization of a state and its external relations. In support of their respective positions, the former school can cite the early American experience and the latter the early Swiss experience.

The League of Nations provides a third source of light for the point at issue. The circumstances attending a state's membership in the League, together with the regularity with which it was represented at the meetings of the policy-forming organs of that institution, viz., the Assembly and the Council,[2] may be taken as a suggestive, though not definitive, index of what may be regarded as an international civic conscience on the part of the members of the international community during the period of the Great Armistice. The purpose of the present discussion is to examine this index in order to learn how the democratic states compared with the non-democratic in the League experience. The answer will be an approach, though only an approach, to the larger question—the relationship between the internal political organization of a state and its support of an organized international community.

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[1] Among the more important proposals for world organization which have recently appeared are Alfred M. Bingham, *The United States of Europe* (New York, 1940); W. B. Curry, *The Case for Federal Union* (New York, 1939); Lionel Curtis, *A World Order* (New York, 1939); Hans Heymann, *Plan for Permanent Peace* (New York, 1941); Graeme K. Howard, *America and a New World Order* (New York, 1940); Oscar Newfang, *World Federation* (New York, 1939); Clarence K. Streit, *Union Now* (New York, 1938), and *Union Now with Britain* (New York, 1941); and H. G. Wells, *A New World Order* (New York, 1940).

[2] In this connection, a study of national representation at the meetings of the Council has, however, almost nothing to teach us. The seats at the Council table, cherished by the Great Powers and coveted by the others, were so rarely permitted to remain empty by those entitled to sit in them that one must search long before coming upon an instance. Except for absences in anticipation of, or following on, notice of withdrawal from League membership (Brazil, 1926; Spain, 1926; Japan, 1933; Germany, 1934; Italy, 1936), the only instances of absence from Council sessions are those of Panama, 74th and 80th sessions; Guatemala, 75th session; Ecuador, 95th session; Iran, 106th and 107th sessions; and Peru, 106th and 107th sessions. Also, in the course of the Ethiopian dispute Italy declined to be represented at the second part of the 89th session. (Data for the Council meetings may be found in the *Minutes of the Council*, Sessions I–CVII; beginning with the sixteenth session, the Council Minutes were published in the *Official Journal.* Data for the Assembly meetings may be found in the *Records of the Assembly*, Sessions I–XX; beginning with the fourth session, the Assembly Records were published as special supplements to the *Official Journal.*)

The first step is to distinguish the democratic states from the non-democratic. To avoid a fruitless argument as to what democracy is, to escape the question "When is a democracy not a democracy?," we may adopt a simple rule of thumb as sufficient for the purposes of the present discussion. Let us regard as democracies those states which fulfill the following conditions, one positive, the other two negative: (1) they have the forms of parliamentary government; (2) they have suffered from domestic sources neither violent nor unconstitutional changes in government since the outbreak of the first World War,[3] or since their establishment as independent states if that was later; and (3) in the same period, they have not been governed by dictatorial régimes. States which do not fulfill these conditions we will regard simply as non-democracies, without trying to describe them any more closely.

Applying these criteria to the 64 states[4] which flourished during the era of the League of Nations, we find that 19 of the 64 fulfill all three conditions. The 19 include:[5]

Australia
Belgium
Canada
Colombia
Czechoslovakia
Denmark
Finland
France
Great Britain
Ireland
Luxemburg
New Zealand
Netherlands
Norway
Union of South Africa
Sweden
Switzerland
United States
Uruguay

They are the democracies. Four fulfill none of the conditions:

Afghanistan
Ethiopia
Iran
Thailand

Thirty-eight professed the forms of democracy, but after 1914 suffered one or more revolutionary changes in government, or had dictatorial régimes in some form for longer or shorter periods, or both. They are the following:

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[3] The choice of 1914 is arbitrary. But time must elapse before democratic institutions can be regarded as stable, as the history of the last twenty years clearly teaches. A people with popular institutions of government sufficiently sound to survive without either dictatorship or violent change in the quarter-century following 1914 may be considered a democracy of some maturity.

[4] Excluded from the study are the diminutive states of Monaco, San Marino, Andorra, and Liechtenstein; the Mohammedan states of Oman, Yeman, Saudi Arabia, and Nepal, which maintained negligible diplomatic relations; such questionable entities as Tibet and "Manchukuo"; as well as the unique Vatican City.

[5] All of the 15 "Atlantic democracies" proposed by Clarence Streit as the nucleus for world union are included, with the addition of Colombia, Czechoslovakia, Luxemburg, and Uruguay. For Streit's discussion of the question of selection for the nucleus, see *Union Now*, Chap. V. His omission of Luxemburg, however, is not explained.

Albania
Argentina
Austria
Bolivia
Brazil
Bulgaria
Chile
China
Costa Rica
Cuba
Dominican Republic
Ecuador
Estonia
Germany
Greece
Guatemala
Haiti
Honduras
Hungary
Italy
Japan
Latvia
Liberia
Lithuania
Mexico
Nicaragua
Panama
Paraguay
Peru
Poland
Portugal
Rumania
Salvador
Spain
Turkey
U.S.S.R.
Venezuela
Yugoslavia

With the four who fulfill none of the conditions, these 38 constitute the non-democracies, a total of 42. The remaining three are better omitted from classification in view of their debatable or very recent statehood. They are:

Egypt
India
Iraq

Thus, of the 64 states considered, 19 may be regarded as democracies, 42 as non-democracies, and three as not suitable for classification.

The next step is to examine the record of these 19 democracies and 42 non-democracies with respect to membership in the League of Nations and representation at the meetings of the Assembly from the inauguration of the League in 1920 through 1939.[6] But, first, what sort of record is to be taken as evidencing a developed international civic conscience and what kind of record will evidence the contrary? Essential to the former would be (1) an early assumption of responsibility *vis-à-vis* the world community in entering the League, (2) maintenance of membership without withdrawal or notice of withdrawal, and (3) regular representation at the meetings of the Assembly. One or more of the following would be evidence of a poor record: refusal to assume responsibility (i.e., failure to enter the League); long delay in assuming responsibility; early or eventual relinquishment of responsibility (i.e., withdrawal from membership); withdrawal coupled with occasional or repeated absence from Assembly meetings; repeated absence from meetings of the Assembly; aggression, resulting in either withdrawal from the League or expulsion therefrom.

According to the record, the following 37 states early assumed membership in the League, maintained it without notice of withdrawal, and all the while regularly sent representatives to the sessions of the Assembly. They include 18 democracies and 19 non-democracies, a notably close division.

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[6] The record is not carried beyond 1939, as the fortunes of war robbed later developments, such as France's notification of withdrawal, of their significance for this study.

Democracies

Australia
Belgium
Canada
Colombia
Czechoslovakia
Denmark
Finland
France
Great Britain
Ireland
Luxemburg
Netherlands
New Zealand
Norway
Union of So. Africa
Sweden
Switzerland
Uruguay

Non-Democracies

Albania
Austria
Bulgaria
China
Cuba
Estonia
Ethiopia
Greece
Haiti
Iran
Latvia
Liberia
Lithuania
Panama
Poland
Portugal
Rumania
Thailand
Yugoslavia

It is these 37 that may be regarded as having shown in a high degree an international civic conscience.[7]

Twenty-four states fail to come up to this standard. They are:

Democracies

United States

Non-Democracies

Afghanistan
Argentina
Bolivia
Brazil
Chile
Costa Rica
Dominican Republic
Ecuador
Germany
Guatemala
Honduras
Hungary
Italy
Japan
Mexico
Nicaragua
Paraguay
Peru
Salvador
Spain
Turkey
U.S.S.R.
Venezuela

Refusal to assume responsibility by entering the League; long delay in entering; early or eventual relinquishment of responsibility by withdrawal from the League; withdrawal coupled with occasional or repeated absence from Assembly meetings; repeated absence from Assembly meetings; or aggression, resulting in either withdrawal or expulsion from the League—these mark the record of the 24.[8] In the whole lot there is only one democracy, the United States.

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[7] New Zealand was absent from the extraordinary Assemblies of 1934 and 1935; Ethiopia, from the extraordinary Assembly of 1935, as well as from the extraordinary Assembly of 1937, and thereafter, though, in view of the circumstances, she cannot be held accountable for any but the absence in 1935; Haiti was absent from the extraordinary Assembly of 1926; Liberia, from the extraordinary Assembly of 1937; Panama, from the extraordinary Assembly of 1926 and the ordinary Assembly of 1939; and Thailand, from the extraordinary Assemblies of 1934 and 1935. These derelictions in otherwise clean records are not sufficient to warrant a different classification for the states in question.

[8] Divided into six groups according to their record, the twenty-four appear as follows:

	Democracies	*Non-Democracies*
Group I. Failure to enter the League	United States	....

To recapitulate: Of the sixty-one states which admit of classification, 19 (31 per cent) can be classed as democracies, whereas 42 (69 per cent) cannot. But 37 (60 per cent) show themselves, in the light of the criteria adopted, as acting with a sense of responsibility toward the international

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Group II. Delayed entrance	Afghanistan (entered 1934)
	Ecuador (entered 1934)
	Mexico (entered 1931)
	Turkey (entered 1932)
Group III. Early or eventual withdrawal	Brazil (notice, 1926)
	Chile (notice, 1938)
	Costa Rica (notice, 1924)
	Hungary (notice, 1939)
	Venezuela (notice, 1938)
Group IV. Withdrawal coupled with absence from the Assembly	Guatemala (abs. sess. II, IV, XVI, ex. sess. 1934, 1935; notice, 1936)
	Honduras (abs. sess. I, II, IV–IX, XI–XIV; notice, 1938)
	Nicaragua (abs. sess. II–IV, ex. sess. March, 1932, 1934; notice, 1936)
	Peru (abs. sess. II–IX; notice, 1939)
	Salvador (abs. sess. II, III, XV–XVII, ex. sess. 1934, 1935, 1937; notice, 1937
	Spain (abs. sess. VII, VIII, notice, 1939)
Group V. Repeated absence from the Assembly	Argentina (abs. sess. II–XIV)
	Bolivia (abs. sess. IV–IX)
	Dominican Republic (abs. all sessions 1932, ex. sess. 1934, all sessions 1935)
Group VI. Agression, with withdrawal or expulsion	Germany (notice, 1933)
	Italy (notice, 1937)
	Japan (notice, 1933)
	Paraguay (notice, 1935)
	U.S.S.R. (expulsion, 1939)

The following data are needed to complete the picture, but do not warrant changing the classification of any state concerned: Mexico (Group II), for financial reasons, gave notice of withdrawal in 1932, but continued to be represented in the Assembly and, later, on the Council, and finally cancelled her notice before the expiration of the two-year period; Chile (Group III) was absent from the June, 1936, meeting of the XVIth Assembly; Spain (Group IV) gave notice of withdrawal in 1926 following the so-called "Council crisis," but reconsidered before the expiration of the two-year period; Italy (Group VI) was absent from the March meeting of the extraordinary Assembly in 1932; the U.S.S.R. was absent from the XXth Assembly, which convened to consider the invasion of Finland, and which resulted in the expulsion of the U.S.S.R. from the League.

community, and 24 (40 per cent) as lacking that sense in some degree. The obvious and necessary conclusion is that in the era of the League of Nations there was nothing like a fixed relationship between the domestic political philosophy of the members of the international community and their participation in international organization.

Further study, however, reveals another aspect of the matter. Only 19 (45 per cent) of the 44 non-democracies are to be found in the column of responsible states, whereas 18 (95 per cent) of the democracies are there. To put it the other way: whereas 23 (55 per cent) of the non-democracies have a poor record of coöperation in international organization, only one (5 per cent) of the democracies can be classed with them. So the overwhelming majority of the democracies were to be found on the side of the angels, but of the non-democracies not even half. Thus, while there was no fixed relationship between the presence or absence of democratic procedures and institutions within a state and the presence or absence of a disposition to assume civic responsibility in its foreign relations, the correlation was high.

In summary: If this League experience with respect to democracies and non-democracies has any meaning for international organization at the end of the present war, it indicates a strong probability of coöperation from an overwhelming proportion of the democratic members. Also we must expect coöperation from the non-democracies, taken as a group, to be markedly less than that from the democracies. But we shall err if we expect all non-democracies of the future to be non-coöperative; for it is important to note in the League experience the faithful coöperation of nearly half of this group. To such extent, the history of the League of Nations throws light upon the proposition that only democracies can safely be granted membership in the future world organization.

JAMES T. WATKINS, IV.

Ohio State University.

INSTRUCTION AND RESEARCH

The Political Science Curriculum in War-Time: Report of the Committee of the American Political Science Association on War-Time Changes in the Political Science Curriculum.* In these days of war, with democracy facing the greatest challenge in its history, it would be a sad mistake for anyone to assume an attitude of smug complacency. Such would be disastrous if not literally treasonable. Educators, therefore, along with labor and industry, business and agriculture, need to re-examine and revaluate their contribution to the common welfare of the community. Engaged in a war that threatens the very existence of freedom of thought, scholarship, and teaching, educational leaders have an obligation to see that the best possible use is made of one of democracy's outstanding institutions—a free educational system. If the democratic nations fail to train men in good moral and intellectual habits, fail to produce men of keen insight and critical judgment, fail to give us free minds that can join in our struggle toward a better life for all the people of the world, they will have failed in one of their most important obligations to the human race, no matter how the struggle upon the field of battle may end.

We as political scientists, therefore, have, along with all who are engaged in education, a real obligation. But, in our eagerness to do our part, which necessarily means training men and women for direct participation in the military, governmental, and industrial aspects of the war effort, we must be on guard against doing those things which would constitute an abdication of other and very important responsibilities. We must, for example, be constantly watchful lest, under the impact of war, we become mere channels for the dissemination of war propaganda or mere instruments for giving technical training to cogs in a machine that someone else is running. This is in no sense to be taken to mean that the fullest coöperation with the military authorities, with the government, and with industry in the creation of the skills that are needed for the successful prosecution of the war is not highly important. But it is to emphasize that we have a very great responsibility for something more as well. We are fighting to preserve our democracy, and in a democracy education for effective citizenship can never be a waste of time. It is well to remember that there is nothing to be gained by winning the war if we are subsequently to lose the peace. And we cannot win the peace in a democratic manner if our citizens—both in the army and out of the army—have been deprived of the kind of training which produces minds that are alert, critical, and informed—minds capable of tackling the great problems involving human values that lie ahead of us, minds that give us some ray of hope in the face of a dark future.

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* The Committee on War-Time Changes in the Political Science Curriculum was appointed by President Anderson in response to a request of the United States Office of Education. Members of the Committee are Ethan P. Allen, Office of Civilian Defense; Rodney L. Mott, Colgate University; Kenneth O. Warner, Office of Price Administration; Francis O. Wilcox, Office of the Coördinator of Inter-American Affairs; and E. M. Kirkpatrick (*chairman*), University of Minnesota.

As political scientists, we should remember that our function is to explore the bases of organized social and political life and to teach the principles of organization that we discover. These principles, if they are of any permanent value, are the same in war-time as in peace-time, and, if we have done our duty during peace-time, we will not need to change either our curriculum or our methods in any drastic manner during the emergency of war.

What we need to do in any particular case depends upon the answers that we can give to such questions as the following. Are we succeeding in getting the student to see himself as a part of the vast socio-political complex which is the world of today? Are we stimulating his imagination so that he can see the world as one interrelated whole, in which the problems of geographically or socially remote persons are connected in some fashion with his own? Are we raising questions of goals or ends to be attained? Are we helping in the clarification of problems of right and justice? Are we offering guidance in the formulation of a social and political philosophy adequate to meet the problems created by the turmoil and strife through which we are passing? Are we acquainting the student with facts about political institutions and their operation? Are we making these facts of value by fitting them into a mosaic that embraces not only what is but what ought to be? Are we aiding in making it possible for the collective life of the human race to become increasingly a matter of conscious human control?

If we have been living up to our obligations as teachers and scholars in the field of politics and government, we have been continually asking ourselves such questions, continually shifting emphasis, continually injecting new subject-matter and new illustrations into established courses, continually adjusting our methods, techniques, and materials to the new problems of society. To do anything else would be to assume that our forefathers had settled all important social, economic, and political problems and would provide an education suitable only for a static society.

Few of us can measure up fully to the ideal of teacher and scholar. All of us, however, can re-examine our work and reassess the value of the contribution we are making to the welfare of the community. In making such an evaluation, certain specific things may very well be kept in mind:

1. *There should be no rush to introduce new courses, but there should be a continuous attempt to keep all courses abreast of the times and to make full use of important new material.* For example (a) we need, at present, to explain the effect of the war upon our own governmental system, the

reasons for the creation of new agencies, and the way in which they affect the daily lives of ordinary citizens. There are significant problems of personnel, procurement, the organization and relations of rapidly multiplying agencies, the relationship of government to the individual, the conduct of foreign policy, the use of executive power—to mention only a few—which are of immediate interest and can be used to illustrate the important underlying principles of our discipline. (b) We need to familiarize the student with probable post-war problems, analyze and evaluate the experience of the past in this respect and help prepare the student for intelligent participation in the future of his generation. (c) We need to give the student an understanding and appreciation of the difference between the autocratic or dictatorial and the democratic way of life. Here we can present the social, economic, psychological, and political factors which have given rise to the present world revolution as means of illustrating certain basic concepts about the nature of the state, the character of the good state, and the techniques for accomplishing politically desirable objectives. (d) We need to make greater use of comparative materials on Latin America, India, China, Japan, Africa, and the like. These areas, on which relatively little emphasis has heretofore been placed, are now significant to the student, and can be effectively used to help him understand many things that, standing alone, would seem abstract and remote from his life.

But all of this can, in most cases, be done in courses that already exist —American Government, Comparative Government, International Relations, Political Theory, and the like. Where it is felt that there is a real need for a course to fill in a gap in the curriculum, it should be given careful consideration and planning in order that it be worthy of academic consideration.

2. *A special attempt should be made to revitalize continually the courses all along the line—to give them real meaning and value to the student.* It is axiomatic that we cannot reach the great majority of the students unless we can first get and hold their attention, unless we can create interest in the material, unless we can arouse and stimulate their minds. This does not mean that the body of the material that we present should be watered down. It does mean that, if we are to leave an impression on the student's mind six months after he has finished a course, some way must be found to associate the principles of a discipline (for he cannot be expected to remember all of the facts) with the meaning of everyday life.

We should start, therefore, to a considerable extent at least, from the material of experience—the material of the common sense world in which the student lives, suffers, acts, enjoys. From the familiar things that the student experiences directly or indirectly we must select material and relate it to certain fundamental problems in order to bring the isolated fragments of experience together and give them meaning.

Now, more than ever before, we are in a position to deal with such topics as presidential power, representative government, propaganda techniques, individual rights and liberties, and the conduct of foreign affairs in a concrete and realistic way by drawing from the wealth of examples constantly before us those that are of real significance to the student. Now, more than ever before, we need to develop an understanding and appreciation of democracy. But to do so we must have less of the cold legalistic framework of government and more of the actual way in which things work; less of the *minutiæ* of legislative procedure and more analysis and evaluation which will lead to critical judgment and insight; less of the legislature in colonial America and more of representative government in the twentieth century; less of state constitutions and more of public opinion. These examples, which can be multiplied many fold, remind us once more that we should reëxamine the content of all our courses. Some may need transfusions least they die of anemia.

3. *We should seek to provide those experiences which lead to a real understanding and appreciation of the democratic way of life, and should encourage students to participate in student government and in the life of the community in which they live.* The values of democracy can be learned in part by actual participation in the democratic process. Students should be given, therefore, as many opportunities as possible to experience an atmosphere of democratic coöperation. Students should share in the task of formulating the rules under which they live on the campus and in handing out discipline for the infraction of the rules. In the classroom they should have the experience of coöperatively seeking for the answers to the problems that we confront. Too often the classroom is darkened by an atmosphere of authoritarianism; problems are brought up to be solved and put to bed by the teacher. When this is objected to, it is often argued that the only alternative is to leave the student in a state of confusion. To a certain extent, this may be true; but the real alternative is not mental confusion. The real alternative is the development of a spirit of curiosity that will keep students in a state of inquiry. What we are seeking to create are actively searching minds—minds alert for knowledge and understanding, minds that can operate only in a democracy and are never consistent with the deadening hand of an authoritarianism that stifles free inquiry.

Moreover, students should be encouraged to participate in various group and community activities and in politics itself. Much has been done to introduce competent people into the fields of administration, but much remains to be done in the way of encouraging active participation of our better students in politics.

4. *We can profitably make considerable use of the comparative method in all of our teaching, and today we must not fail to take advantage of its effectiveness in making plain the values of democracy.* By comparing our Congress with the German Reichstag, our police system with the German

Gestapo, our schools and universities with the German educational barracks, we may bring about a clearer understanding and appreciation of the democratic way of life. This is not to say that our institutions are perfect. Far from it! But by constant use of the comparative technique we can develop a critical judgment capable not only of comparing our democratic institutions with those of fascist Germany, but of comparing our institutions with those of a more ideal democracy.

5. *Finally, we should constantly keep in mind that our courses are not meant to create mere fountains of information, but must be designed to aid in the development of critical insight, keen judgment, and real understanding.* Mere factual knowledge—most of which is forgotten soon after graduation, if not soon after examination—is not enough. We must not require all learning and no thinking. We do not want "educated" men who have learned but not reflected, who have facts but no insight, who have knowledge but cannot find their way, who have been taught but not prepared for life.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

At the University of Illinois, Professor Clarence A. Berdahl has been appointed chairman of the department of political science in succession to Professor John M. Mathews, who asked to be relieved of administrative duties.

At the University of Pennsylvania, Dr. Alfred G. Buehler has been promoted to a professorship and Dr. Edgar B. Cale to an assistant professorship. Dr. Cale has lately returned from a year's study in Latin America on a Penfield Fellowship.

Dr. Denys P. Myers, of the World Peace Foundation and the Fletcher School of Law and Diplomacy, has since June been with the Division of Special Research, Department of State.

Professors Ellery C. Stowell, of the American University, and Charles E. Martin, of the University of Washington, have exchanged places for the current academic year.

Professor Joseph R. Starr, of the University of Minnesota, has entered active service in the U. S. Army.

Professor John T. Salter, on leave from the University of Wisconsin, is teaching at Stanford University.

Professor Francis R. Aumann is on leave from Ohio State University and is in service with the U. S. Navy Department.

Dr. Harry A. Garfield, president of Williams College from 1908 to 1934, and president of the American Political Science Association in 1923, died at Williamstown, Mass., on December 11. A fuller notice will appear in the next issue of the Review.

Professor Edward W. Carter, of the University of Pennsylvania, has received a lieutenant's commission in the U. S. Naval Reserve and reported for active duty on October 19. Dr. Bennett M. Rich, instructor, has been commissioned as a first lieutenant and is attached to the Provost Marshal's Office in Washington. Instructors John Dautrich and D. Barlow Burke have received commissions in the U. S. Naval Reserve.

New additions as lecturers at the University of California at Los Angeles include Drs. Thomas P. Jenkin, of the University of Michigan, and Paul Kelso, of Ohio State University.

Dr. Herbert G. Sonthoff, research assistant at Harvard University, has been appointed to an instructorship at Swarthmore College.

Professor James C. Charlesworth, of the University of Pennsylvania, has been appointed director of the Graduate Division of the Wharton School.

Professor Fritz Morstein Marx, of Queens College, enlisted as a private in the Army on October 9 and is now stationed at Camp Joseph T. Robinson, Arkansas, where he is undergoing a course of basic training. Dr. Norton Long resigned as of September 1, 1942, to accept a position in the Division of Rent Control of the Office of Price Administration. His place has been taken by Dr. Hugh A. Bone, formerly of the University of Maryland.

Dr. A. B. Butts, president and professor of law at the University of Mississippi, on military leave, has been promoted from major to lieutenant colonel in the Judge Advocate General's Department, U. S. Army. He is on duty at Second Army Headquarters, Memphis, Tenn.

Professor Charles H. Titus, on leave from the University of California at Los Angeles since February, 1941, to serve as a major in the U. S. Army with the special assignment of public relations officer for the Fourth Army at the Presidio in San Francisco, has recently been promoted to a lieutenant colonelcy, and has been transferred to the Signal Corps at Fort Ord, California.

Dr. Royal S. Van de Woestyne has been appointed visiting associate professor of public finance in the Graduate School of the University of Cincinnati, and is concerned primarily with courses in training for public service. Dr. A. M. Hillhouse has been granted a leave of absence to act as budget officer, Office of the Administrator, National Housing Agency.

At the University of Missouri, Professor Chesney Hill has been granted a leave of absence to enter military service. He at present is located at Camp Barkley, Texas. Dr. Donald Harter, of the State University of Iowa, has been appointed assistant professor of political science and will teach the courses in international law and relations formerly taught by Professor Hill.

Professor H. Arthur Steiner, of the University of California at Los Angeles, took leave of absence from the University October 1 for the duration of the war to accept a commission as captain in the U. S. Marine Corps. He is temporarily stationed at San Diego, California. As chairman of the department of political science at the University, Professor Steiner has been succeeded by Professor Russell H. Fitzgibbon.

Dr. C. LeRoy Stephens has left Ohio State University to become instructor in political science at Harvard University. During the first half of the summer, he taught at the University of West Virginia.

Dr. Frederic Heimberger has been made assistant professor at Ohio State University. He taught at the University of West Virginia during the second half of the summer session.

Dr. Thomas H. Reed, of New York City, participated in a panel discussion of the development of leadership to uphold American institutions, held in Indianapolis on September 29 under the auspices of the National Foundation for Education in American Citizenship.

At the University of Tennessee, Messrs. Lyndon Abbott, L. L. Durisch, Arthur Jones, and Norman Wengert, all of TVA, have been engaged as special lecturers in political science.

In a review of *Propaganda by Short Wave* (edited by H. L. Childs and J. B. Whitton), published in the October issue of this journal, the name of Professor John H. Herz, as a collaborator with Professor Whitton in preparing the introductory chapter, was inadvertently omitted.

The general theme for the twentieth session of the Institute of World Affairs held at Riverside Mission Inn, California, December 13–16, was "The World Crisis and Reconstruction."

Dr. George L. Millikan, formerly instructor at the University of Vermont, has been appointed assistant professor at the University of Delaware, where, at the beginning of this year, political science was set off as a separate department.

Dr. James K. Eyre, Jr., has become an instructor in the division of social sciences and an adviser in government at Sweetbriar College.

At the November elections, Dr. Howard J. McMurray, assistant professor of political science in the Extension Division of the University of Wisconsin, was elected to the national House of Representatives from the 5th Wisconsin district (in Milwaukee).

Professor Karl Loewenstein, of Amherst College, served last spring as a special assistant to the Attorney General of the United States and this year is dividing his time between teaching at Amherst and work in Washington.

Mr. Dale Pontius, of the National Resources Planning Board, is in service in the U. S. Army as a private.

At Iowa State College, Professor John A. Vieg has been made a member of a committee on the newly created Social Science Center—a committee having responsibility for formulating policies governing research, teaching, and extension work in all the social sciences.

Miss Daisy Parker, who holds a master's degree from the University of Virginia, has been appointed instructor at the Florida State College for Women.

Dr. John H. Hallowell, who last May resigned his instructorship at the University of California at Los Angeles to accept an appointment with the Office of Facts and Figures, is now at Duke University as visiting assistant professor and is giving courses normally conducted by Professor Taylor Cole, now with the Office of War Information in Washington.

After February 1, Professor Leland M. Goodrich will be on leave from Brown University to serve as full-time acting director of the World Peace Foundation in Boston.

Professor William Tayler, formerly in charge of courses in international relations at Syracuse University, is now senior economic analyst in the Bureau of Foreign and Domestic Commerce, Department of Commerce, and Professor John Russell, formerly on the staff of the Office of Civilian Defense, is now working under the budget director of the War Department.

Professor Spencer D. Albright, who recently completed a two-year tenure at Reed College while Professor McKinley was in Washington, has joined the staff of the University of Washington as lecturer in political science. He will teach most of the courses regularly handled by Professor Edmund F. Spellacy while the latter is in service as a naval officer.

At the University of Alabama, Professors Charles W. Smith, Jr., and Eric Voegelin have resigned to accept other positions, the former at the University of Kentucky, the latter at the Louisiana State University. Professor Baskin Wright has taken leave of absence to accept an appointment with the state office of the Office of Price Administration, and Dr. Walter H. Bennett, a member of the political science staff of the University for three years, has returned to the political science department as instructor.

At the Illinois Institute of Technology, the following changes have taken place during the current year: Dr. Herbert A. Simon has been appointed assistant professor to succeed Dr. Victor Jones; Dr. Harold W. Davey has resigned to accept a position with the National War Labor Board in Washington; and Mr. M. W. Fodor, special lecturer in international relations, has become a full-time member of the staff of the *Chicago Sun*. Professor John Day Larkin is serving in the Chicago area as Special Mediation Representative for the War Labor Board.

An institute on World Organization, held at the American University September 14–18, was attended by some one hundred sixty persons. The lectures are to be published in book form.

As a contribution to an understanding of the war effort, the University of Washington political science department is offering a seminar on War-

Time Administration. Unusual features include the presence of official personnel from the agencies under discussion and the use of the facilities of the Bureau of Governmental Research to enable the staff to keep abreast of latest developments.

In coöperation with the National Archives, the School of Social Sciences and Public Affairs of the American University is offering an integrated program in records and archives administration, intended to serve the needs of those responsible for records both in the file rooms of government agencies and in archival establishments. The program consists of a basic course for undergraduates in the management of records, both current and non-current, and a number of advanced courses on more specialized phases of the subject.

The sixty-second annual meeting of the Academy of Political Science, held at the Hotel Astor, New York City, November 10, was devoted to three general topics, as follows: "The War of Distances," "The Armed Forces—Their Movement and Supply," and "The United Nations."

Internship Training in Government Administration at Washington. A seventh group of government interns is now in Washington engaged in administrative training under the auspices of the National Institute of Public Affairs. Following an orientation of approximately a month, the twenty-four men and eighteen women were placed in more than a score of government agencies, where they are performing practical assignments under the supervision of federal officials. They are meeting once a week for discussions with men prominent in public affairs, are taking courses after hours at the American and George Washington Universities, and are being given tutorial supervision by the staff of the Institute. Unlike the former students, the present group started on July 1 (instead of in September), and their schedule has been changed so as to take only seven months rather than the customary nine. Basically, the internship program remains much the same; and the 1943 competition was announced in November.

What has happened to the past six groups of interns? A survey of the 229 graduates of the National Institute's program has just been completed. Almost all interns have gone into government service, and with the nation converting to war there has been a corresponding "conversion" in their activities. Half of the men already are in the armed services, and of the remaining interns, half are in civilian war agencies.

There are 106 former interns in the various civilian services of the federal government. Eight of this group are in foreign service outside the United States, six with the State Department in Latin American countries working as vice consuls or economic analysts, and two with the Panama

Canal in personnel management. One graduate is in Africa with Pan American Airways. In Washington, a large group is employed in various agencies directly engaged in war work. For example, seven are in the War Department, seven in the War Production Board, six in the Office of War Information, five in the Board of Economic Warfare. Others are in agencies closely related to the war program, such as the Executive Office of the President, the Treasury, and the Department of Justice.

Most of the graduate interns now have responsibilities far larger than those usually given to their age group. For example, one is assistant director of personnel management in the War Department, which has jurisdiction over a million civilian employees. Another is budget officer of Foreign Funds Control; another is a section chief in the Office of Price Administration. Others are assistant executive officers, administrative assistants, economic analysts, placement officers, and the like, with salaries varying from the junior grade ($2,000) to the principal level ($5,600).

Of the forty graduate interns who are not in the federal government, ten are in education, either as faculty members or as graduate students. Eighteen are housewives, a number of them carrying on part-time community work. Five are employed by private business concerns. Three are in local government and quasi-governmental organizations.

Eighty-one men at the present time are in military service, thirty-three in the Army, thirty-six in the Navy, seven in the Coast Guard, five in the Marines. Twelve of the men in the Army are commissioned and several others are officer candidates. All of the men in the Navy, Coast Guard, and the Marines are commissioned officers or in training. Rank alone, of course, does not tell the whole story. One Army officer is in Australia as personnel director of a large force of civilian workers supporting the A.E.F.; another has an important post in the national headquarters of the Selective Service System. In the Navy, many of the ensigns are in supply work, while in the Coast Guard a number are doing work on organization problems. In all branches of the armed forces, interns are using their administrative training.

The rapid rate at which the interns have advanced to positions of responsibility is testimony not only to their ability and training, but also to the great need for administrative personnel. In peace-times, there has not been a widespread recognition of the importance of selecting and training management-talent; but the war has made the necessity very apparent, both for military and civilian purposes. These needs constitute a challenge to college students to prepare themselves for careers in administration and management.—FREDERICK M. DAVENPORT.

BOOK REVIEWS AND NOTICES

If Men Were Angels. BY JEROME FRANK. (New York: Harper and Brothers. 1942. Pp. xii, 380. $3.75.)

Men are not angels. Government must, therefore, be instituted among them. That point is not new; it was established long before the Federalist papers were written. Even in Aristotle's day, there was not a little "government interference." And today, in this period of priorities and price controls, there cannot be much question about it: Men are not angels and must be governed.

It does not necessarily follow, however, that government should be "of laws and not of men." In fact, there is no such thing. Government is not a mechanism operating automatically. Belief in that myth has had unfortunate consequences; people are thus induced to be careless about the quality of men who govern them. Government cannot be dissociated from the men who run it. And yet, the alternative is not government of men. Government *should be* "of laws"; but it should be "of laws well administered by the right kind of men." This should be the emphasis in a democracy, and a popular awareness of it is essential if democratic government is to operate effectively.

Readers of Judge Frank's earlier work, *Law and the Modern Mind,* will recall his penetrating analysis of the courts. We were urged there to peer behind the words "independent judiciary" and look at the judges. Now, in the same convincing manner, he tells us we must look behind the administrative agencies at the men who administer them. The men determine the quality of the work. Drawing upon records of the Securities and Exchange Commission rather heavily for illustration, Mr. Frank finds that these agencies are not star chambers exercising arbitrary authority in an unrestrained manner. On the contrary, they hold open hearings, assemble and analyze facts with expertness, and willingly permit their decisions to be subjected to judicial review. Their powers are carefully curtailed by law.

This book was written in 1940 and 1941, Mr. Frank tells us. Thus it was written while he was still a member of the Securities and Exchange Commission. Moreover, it is dedicated to Associate Justice William O. Douglas, who, according to Mr. Frank, "while chairman of the Securities and Exchange Commission, superlatively demonstrated that effective administration can be made an important instrument of true democracy." This sets the tone of the book. It is a defense of methods and procedures of the SEC and other administrative agencies against such erudite critics as Dean Pound. The administrative agency, in Mr. Frank's opinion, "offers an affirmative and purposeful way of insuring that, to a considerable extent, the relevant facts will be brought out, the public's interest made clear and justice done" (p. 147).

Judge Frank is not a Marxist. He would not abolish private capitalism. He would not push the "economically powerful few" too hard, lest they turn to fascism to try to save their economic skins. "The result, in all likelihood, would be civil war" (p. 260). Regulation by administrative agencies is the way out, if the economic royalists will only accept it. The welfare of the many can be achieved without a destruction of the major powers of the minority.

The author is not unaware that there is a war going on. Every American should be bending his energies to achieving a victory over Nazism, without forgetting, however, "that that victory will indeed be pyrrhic if an effective democracy at home does not follow" (p. 260).

Some day this war assuredly will come to an end. Post-war problems will be upon us, problems as difficult of solution as are the war problems today. There will be a mad scramble for power. Old institutions and methods will be subjected to reëvaluations and new ones appear. This book should be read by everyone interested in making democracy work more effectively.

E. Allen Helms.

Ohio State University.

The New Belief in the Common Man. By Carl J. Friedrich. (Boston: Little, Brown and Company. 1942. Pp. xiii, 345. $3.00.)

Democracy necessitates faith in the common man. This is impossible if it is meant to imply complete rationality, impeccable taste, the best judgment of specialized accomplishment, and general infallibility on the part of common men, individually or collectively. It is possible if we confine the scope of common men to the practical affairs of common concern and common human values which are politics. For common men, making collective judgments, embody a traditional morality which ensures sanity, and possess character, more significant than intellect in that sphere. Propaganda, given freedom for all interests in its making, is not dangerous: the interdependent thought characteristic of common men collectively will arrive at a balanced position between conflicting claims, particularly where education promotes independent thought in individuals and discipline in training leads to the self-discipline of character.

Modern administration, with its bureaucracy, is not opposed to democracy, but rests on a give-and-take between specialists in that field and the ordinary man, who, by reason of his own instinct of workmanship, can appreciate and judge the skills of administrators. Similarly, planning is a continuous inter-penetrative adventure, not the fitting of people to a blue-print. Democracy is not opposed to efficiency, but constitutes its true foundation.

Democracy *is* opposed to the concepts of the state and of sovereignty, totalitarian in their nature. It is opposed likewise to the rigid majoritarian thesis, anti-democratic in concept, and absolutist in consequences. Likewise, though more subtly, absolutist, and clearly an aid to élite doctrine and practice, is the dogma that democracy must rest on agreement on fundamentals: that is a denial of the very freedom, necessitated by human uncertainty, which is the rationale of democracy.

Finally, democracy rests on pan-humanism, the essence of the Christian tradition with its cherishing of personality. Pan-humanism's specific contents today are the Four Freedoms. They must be institutionalized. That is possible only if the common man, looking beyond the nation, provides the necessary psychological foundations of sympathy and imagination and the ethical conviction of his tradition.

These, in essence, are Professor Friedrich's theses. His insistence on limiting the claims made on behalf of the common man, lest by claiming too much we render the democratic thesis too facilely vulnerable, seems genuine wisdom in these difficult days. His criticism of majoritarian dogma as a sure road to tyranny and his emphasis on the necessity of not insisting on any specific fundamentals, since the very justification of democracy is a recognition of human imperfection, are good ethics no less than sound practical advice to professed defenders of democratic society. Finally, his suspicion of all excessive veneration for the state, direct or indirect, overt or covert, and his emphasis on the need for revivifying the essence of Christian conviction and Christian tradition concerning the nature of personality, and the duties of men in terms thereof, are a healthy preachment against a host of contemporary errors, even though one is constrained to protest against his thoroughgoing condemnation of the concepts "state" and "sovereignty," which need redefinition and correct use, not rejection.

Nevertheless, Friedrich does not escape entirely the common error of confusing the ethical justification of democracy on the ground that it, unlike élite régimes, gives scope for the development of personality in all men by reason of its proper humility, its unwillingness to believe in the human possession of final truth, and the much more questionable claim that, even in a limited sphere, it embodies superior wisdom and secures greater efficiency. Even in politics as practical judgment and good sense, it is not readily demonstrable that the collective democratic judgment will necessarily be a better one than that of the expert, though on moral grounds it may be better to follow it, even if it is, in content, less wise as a solution for particular problems. Where there is already a democratic society, firmly based, there democracy will no doubt work most efficiently —indeed, it may be that it alone will function effectively. But to show that it is always and necessarily the most efficient government is well-nigh impossible. This is not, again, to argue that democracy does not have the duty to develop efficiency in order that it may maintain itself, far less that it cannot do so. Similarly, it must no doubt satisfy various wants lest men, dissatisfied, reject it, too, in search of immediate fulfilments, learning, too late, that they have surrendered their birthright for a mess of pottage. Many today have learned that bitter lesson, and realize the value of moral freedom against any organization, however efficient. Democracy must be efficient that its moral principles may continue to enjoy institutional embodiment: superior efficiency is not its given attribute, or its moral justification. Indeed, in time of crisis it may be possible for a society which cherishes democratic values to forego temporarily, without disaster, some of the essentials of normal democratic government for the sake of survival. That is always hazardous. But men collectively must ensure survival before they can pursue the good life, even though bare life is of no moment unless we believe they have capacity for the former, and may well be to them something worth surrendering if they find themselves deprived of the opportunity to exercise that capacity. It is the duty of democracy always to ensure that degree of efficiency necessary under the given conditions for its safety. Democracy does not automatically so do because it is such; and its moral rightness does not rest on its so doing. Indeed, Professor Friedrich's continual insistence on collaboration and consent, in administration and planning, is in truth itself not a demonstration of the superior efficiency of those techniques, but precisely a plea that they are superior because consonant with, and expressions of, the moral freedom of the common man.

THOMAS I. COOK.

University of Washington.

The Amending of the Federal Constitution. By LESTER B. ORFIELD. (Chicago: Callaghan and Company. 1942. Pp. xxvii, 242.)

There have been curiously few systematic treatises on Article V of the Constitution, although potentially it is the most important provision in the entire document. Books and monographs have appeared on several of the leading clauses and on the legislative, executive, and judicial powers in general. But the amending power has received relatively cursory treatment. There have been many articles in legal and political science journals touching upon one or another phase of the power and its use. Yet this is the only volume known to the writer which devotes itself wholly to a consideration of this provision. And it is itself a mildly revised and expanded collection of law review articles.

The reason for this literary nonchalance with regard to Article V is that it has never proved as significant in our constitutional development as might have been expected. The first ten amendments were, to all intents and purposes, part of the original Constitution. And in the next 150 years not more than two or three amendments were adopted which can really be considered as changing in any vital or significant way the distribution of powers under the Constitution. The formal amending power has therefore been of almost miniscule importance in the actual development of American governmental institutions.

The reasons for this, in turn, are not far to seek and have been commented upon many times. It is fair to say that the Supreme Court of the United States has sat as a continuous constitutional convention, making by interpretation and construction many fundamental changes in the Constitution. What has not been accomplished by judicial interpretation by way of adapting that document to the needs of a growing nation has been achieved by constitutional usage. The operation of Article V has been relatively cumbersome, inflexible, and infrequent.

One could approach the problem of amending the federal Constitution from a number of points of view. The legal approach would be concerned chiefly with the intent of the framers, the rôle of the courts in effectuating that intent, and an analysis of the courts' rulings with regard to the scope of the power and the appropriate procedures under it. The political approach would have to do with the responsiveness of the mechanism to political necessities, the rôle of custom and usage, the activities of courts as amenders of the Constitution, and the relationship of power-groups within the community to the nature and effectiveness of efforts to change the contours of governmental authority. An economic approach might be concerned with determining the economic implications inherent in a difficult amending process, and in the alignment of economic groups on issues of amendment. A philosophical approach would lead to considering the methods of changing written fundamental law as they affect such concepts as sovereignty, democracy, and natural law. A broad and comprehensive discussion of the amending power in the United States would need to encompass some consideration of these various aspects of the problem.

Professor Orfield's book does not pretend to be such a broad and comprehensive discussion. The volume is restricted largely to the legal approach. After considering the origin of Article V, and commenting that it was apparently the view of the framers that it would be used considerably more than has in fact been the case, Professor Orfield follows with three chapters which constitute the heart of the work. They deal with judicial review of the validity of amendments, with the procedure for amendment, and with the scope of the amending power. While restricting himself largely to what courts have said, he does put himself fairly clearly on record as against the proposition that there are implied limitations on that power. After a chapter on the theory of sovereignty—in which he finds that "the nature of the federal amending process demonstrates the futility of the concept of sovereignty" (p. 165)—he closes with a consideration of proposals for the reform of the amending clause. Here again he contents himself largely with stating the arguments and their implications. His own preference for a reasonably flexible method of altering the fundamental law is expressed when he concludes: "It may be well to guard the people against themselves as to ordinary matters, but it is possible to go too far when it is sought to do this with respect to altering the Constitution. Society cannot go on without taking some chances. The interests of progress as well as order must be consulted, otherwise order itself will perish" (p. 221).

The strength of the work lies in its thorough, scholarly, and exhaustive investigation of court opinions dealing with Article V, and in its systematic approach to all important legal aspects of the amending power. Its almost exclusively legal approach, and its devotion of many pages to what will seem to many as legal *minutiæ*, will restrict the breadth of its appeal and the scope and depth of its impact. It is, in the last analysis, a competent treatise on the legal aspects of the amending power, on the basis of which a first-rate study of constitutional change in America in its broader phases can be projected. This latter work remains to be written.

VINCENT M. BARNETT, JR.

Washington, D. C.

Administrative Regulation; A Study in Representation of Interests. By AVERY LEISERSON. (Chicago: The University of Chicago Press. 1942. Pp. xii, 285. $3.00.)

Mr. Leiserson discusses in this book a difficult and important question, and by his extended collection of relevant data, and thoughtful analysis of what he has read and heard, has helped to create some needed order. His title might well have been "Economic Interest Representation in Administrative Regulation"; he treats of legislative provisions and regulatory administrative organizations "in which persons are designated to act in the name of specified economic groups or the group or groups themselves select their delegate or agent to act for them in positions of responsibility for planning and determining policy."

In the first two chapters, Mr. Leiserson argues for the importance of group interests as basic elements in the policy of administrative agencies possessed of discretionary power. In these chapters, and in the concluding one, he advances most of his generalizations, theories, and definitions; and because of the reviewer's opinion of the value and interest of the book, he would like much to explore with the author some of these. The matters dealt with here are very slippery and have been subject to the loosest treatment by us all; and the author might usefully, by tightening his sentences at points, have made it easier for the reader to come to grips with the really good things he has in store. Thus, should the phrase "represented in administration," on page 6, be changed to "represented before the administrative agency in its proceedings," as the further discussion seems to show? And the phrase "the process of integrating conflicts of economic groups with the exercise of public authority" is so important to his thought that it deserves more clarification. A long sentence on page 54 contains two phrases—"whether it is not more relevant" and "in terms of"—that do not assist the reader to grasp the author's point. The reviewer would emphasize that these suggestions for the greatest possible effort to clarify, perhaps by shorter sentences and a watchful scrutiny of phrases, are made here because the author is making a valuable contribution to the effort both to describe an important part of our government and to create a more valuable political theory.

The bulk of the book—Chapters 3–7 inclusive—describes different types of administrative participation in the administrative regulatory process, as illustrated by many agencies, procedures, and episodes. Mr. Leiserson has made excellent use of the field fellowship of the Social Science Research Council to which he refers. He seems to have been sensitive to the remark or action which reveals the heart of a practice or experience; thus his comment (pp. 210, 211) concerning the production-control and land-use programs of the Department of Agriculture are penetrating, and his account of the bituminous coal "stabilization" experience goes well below the surface and behind the façade.

After an account of the rôle of interest participation in the exercise of the summary, dispensing, licensing, order-making functions, investigatory, rule-making, and mediating functions, Mr. Leiserson surveys experience with representation of interests on boards, and discusses group attitudes toward the assumption of official administrative responsibility by groups. There follow chapters on representative advisory committees, the allocation of administrative functions to interest groups (with some account of the resulting problems of defining the group, and safeguarding its exercise of public powers), and on the legal aspects of interest representation. The final chapter—"The Dilemmas of Interest Representation"—is an even-tempered, balanced, and wise appraisal of the "endowment of the responsibilities of public office upon group officials or representatives." The theoretical problem is confronted, and Calhoun relevantly cited. There is a reference to the pluralist and guild socialist theorizing of the time of the last World War, and the failure then to solve the problem of social unity raised by such theories—and dealt with so abruptly since by powerful party machines. In the discussion of the administrative aspects of this dilemma, more perhaps might be made of the problem of determining what the group is, how it shall function, and whether its minorities shall have "rights." The author fairly appraises the difficulties and advantages of interest participation on administrative boards and advisory committees, and through delegation of functions to "private" organizations. This discussion may well be read with Dewey's *The Public and Its Problems* in mind. The author does not avoid frank statement of his preferences, while sensitive to qualifications dictated by wide observation; and he leads from specific data to wide-ranging and well considered generalization concerning the fundamentals of politics when the nature of his inquiry requires it. The book ends with useful suggestions for action that reflect hard thinking, an even temper, and a sense of civic responsibility.

JOHN M. GAUS.

University of Wisconsin.

Administrative Planning Agencies in the Federal Government. (Washington, D. C.: Government Printing Office. 1942. Pp. 195.)

The scope of this publication by the Civilian Personnel Division of the Office of the Secretary of War is keyed to a definition of administrative planning by Mr. Donald C. Stone, assistant director of the Budget. He says that administrative planning "is concerned with the development of sound organization, the method of staffing the organization, the procedures and practices to be followed, and the direction and coördination of operation" (p. 7). Except for inevitable matters of interpretation, this definition is used as a foundation for examination of fifteen departments, bureaus, commissions, offices, agencies, and administrations in so far as they have units concerned with the functions specified. The primary purpose of the survey is to advise the War Department how best to profit by the experience of other governmental administrations in meeting the problems of expansion and multiplication of activities.

The method used in the survey is indicated clearly. A questionnaire was prepared as the basis for interview and examination of units coming within its coverage. This questionnaire is conveniently presented at the beginning of the volume. Then follows a forty-page analysis of findings, covering matters of organization within the units examined, the relation between units and heads of administrative departments or other large systems, and the functions of the units themselves. Each of the units examined is clearly presented in an appendix, so that the bulk of the survey consists of appendices giving the details of organization and functioning of particular units within the purview of the survey. The wealth of description permits any responsible official faced with the problem of maximum use of his resources to obtain suggestive help. The authors of the survey, however, have refrained from trying to establish universal values—a quality that lends value to the publication because of its exploratory rather than definitive nature.

While care is evidenced in obtaining comparable, and relatively complete, descriptive data within a fixed definition of scope, no attempt has been made to determine relationships between various planning agencies within or among different departments or larger agencies. Just what the place of personnel, budget, enforcement, and rule-making planning agencies is or should be in the scheme of things is not critically approached. That an over-all problem of planning seems inherent in our developing administrative processes seems indicated, but not discussed. The problem of administrative planning, in a larger sense, by which the purposes of legislation are effectively carried into continuous operation, within the frame of discretionary authority, and with a minimum of internal friction and an optimum of consideration of citizen interests, is beyond the perspective of the survey. In this sense, the report might be said to be concerned with means of executing ends, independently of the ends themselves. Although justified for the purposes of the survey, its exploratory findings seem to point the need for further examinations with a broader scope and vision before an adequate perspective of the planning function of administration can be appreciated.

SPENCER D. PARRATT.

Syracuse University.

The Judicial Function in Federal Administrative Agencies. BY JOSEPH P. CHAMBERLAIN, NOEL T. DOWLING, AND PAUL R. HAYS. (New York: The Commonwealth Fund. 1942. Pp. xii, 258. $3.00.)

The Legal Research Committee of the Commonwealth Fund adopted the policy some years ago of rendering aid to scholars in the preparation and publication of materials relating to administrative law, which would be of service to the legal profession as well as to those who are responsible for the formation of the policies of administrative agencies or whose duty it is to define their powers and to provide means for the control of their action. The above volume, issued as one of this series, deals with the practices and procedures of a selected group of federal administrative agencies, and analyzes and evaluates the judicial function of these tribunals. Throughout the study, the aim has been to describe the judicial activities of administrative officers within the contours of their statutory powers and of the court decisions and developing techniques relating to the performance of their functions. More than a third of the volume is devoted to a presentation of factual data concerning administrative judicial sanctions, such as imprisonment, fines and penalties, the withdrawal of benefits, or threats of prosecution. The most valuable and informative part of the volume is contained in this chapter, since too little consideration has been given to the informal methods and procedures of administrative agencies, as well as to the means of carrying out their policies without recourse to formal proceedings with hearings, the preparation of records, and the making of findings as the basis of an order or award. Thus attention is directed to a neglected phase of administrative law involving first non-judicial sanctions mostly in the form of exhortation or propaganda, and then the administrative judicial sanctions by which the larger part of the objectives of certain agencies are accomplished without formal proceedings by the agencies or appeal to the courts.

Though the informal methods of the agencies, by which the larger part of their work is done, are described briefly, primary consideration is given to their formal proceedings. Such proceedings are regarded chiefly from the standpoint of the preparation of a record for adequate and effective review by the courts rather than the means of securing fair, equal, and substantial justice to the parties whose interests are involved. In the preparation of the record, the agency, contrary to what would seem to be rational requirements and principles, is expected to divest itself of all the information and experience gained in dealing with similar situations in order to have the hearing proceed as though it were on all sides one of first impressions. Otherwise the bias of the agency to accomplish certain ends, or the "intuition gained from experience," as Justice Holmes called it, might influence the findings and the order. And it is assumed that the practice of writing opinions after the common law custom, which is of course not followed in many court proceedings, is a necessary requirement for the formal proceedings of administrative tribunals. The increasing complexity of the law due to the welter of opinions rendered by the courts does not augur well for the results of a similar practice by all of the administrative agencies. And fortunately the courts are moving in the direction of placing limitations on the number and extent of written opinions. Unless the object is to build up a nicely articulated and symmetrical system of jurisprudence which may be used to develop precedents for mechanically-minded administrators or judges, there appears to be little advantage to be gained and much time, energy, expense, and useless paraphernalia to be saved or avoided if certain tribunals in their formal proceedings are not required to write opinions sustaining the findings and order in each case.

As an indication of the disposition of the authors to encourage the development of administrative agencies in accordance with court models, the Morgan cases are treated as defining the requirements for proper procedure of these tribunals, without any consideration of the impractical conditions and unreasonable requirements laid down in these cases and their modification in recent decisions. In a similar manner, the decision of Chief Justice Hughes in the case of Crowell v. Benson, relating to the requirement of a trial *de novo* when so-called "constitutional" or "jurisdictional" facts are involved in the findings and order of an administrative board, is considered as laying down the law of the land as required by the federal Constitution. A review of the cases and the practices of administrative tribunals in workmen's compensation cases shows, however, that this decision has had practically a negligible effect upon the procedure in this type of case. A trial *de novo* is not resorted to, although obviously in a considerable number of such cases jurisdictional or constitutional facts are involved.

From the reading of these pages one would gather the impression that all is serene and peaceful on the administrative law front and that the important issues arising from the review of administrative agencies have been reasonably and adequately settled. Nowhere does one get more than a glimpse at the sharp, and sometimes acrimonious, division of opinion among the Supreme Court Justices on the review of the decisions of administrative tribunals. Nor do the pendulum swings of the courts favorable or unfavorable to administrative methods and procedure receive due consideration, as well as the marked changes in the attitude of the Supreme Court on some of these controversial questions as manifested in recent decisions. In short, in the opinion of the reviewer, an opportunity was missed to give light and guidance, not only to lawyers, but also to the public, whose rights and interests are vitally affected by the work of administrative tribunals on some of the extensively discussed and the strongly contested issues which have recently been agitated in the press, on the public forum, and in legislative halls.

CHARLES GROVE HAINES.

University of California at Los Angeles.

Employee Relations in the Public Service; A Report Submitted to the Civil Service Assembly by the Committee on Employee Relations in the Public Service. GORDON R. CLAPP, CHAIRMAN. (Chicago: Civil Service Assembly of the United States and Canada. 1942. Pp. xx, 246.)

No field today presents greater challenge to the administrator, whether public or private, than that of employee relations. Nor is any area more fertile for the designs of the political theorist. Here lie the real frontiers of democracy—frontiers still largely unexplored, but of untold promise. For political democracy can be strengthened in these times of strain only as democratic ways become a part of all aspects of men's lives; and it is difficult to imagine a more effective counterpoise to totalitarianism than the democratic organization and administration of industry and the public services.

In the present condition of the world, the relations of employees to management assume a significance extending far beyond questions of enhanced productivity. Here, as in England, we are witnessing the first vague fumblings toward the democratization of our economic life; and those efforts cannot be without effect upon the public services. They are reflected, indeed, in the steady progress of civil service unionism and in the increasingly insistent demands of the staff for a voice in matters affecting them. The problems with which the present volume deals are thus of the widest significance.

This report differs from the three earlier reports in the Civil Service Assembly series in that it does not presume to outline a model program. Rather, the Committee set out to provide students and practitioners with a "source book of illuminating opinions, judgments, and experience which may be suggestive for future study and resolution of the problems in the field." In this aim, they have succeeded admirably. In no other work have the problems of employee relations in the American public service been so broadly conceived or so lucidly clarified. The volume is an indispensable compendium of organized opinion. Its authors have combed the literature for relevant materials and forged them into a lively and highly literate account of the pros and cons of unionization, affiliation with outside labor groups, collective bargaining, majority representation, the right to strike, the rôle of the personnel agency in employee relations, the bearing of employee organization on democratic theory.

A certain inconclusiveness is the inescapable result, not only of the controversial subject-matter of the report, but of this method of presentation. Pros and cons are so carefully balanced that the reader occasionally feels like a tight-rope walker. But only occasionally. On most major points, clear-cut conclusions are reached which provide a firm foundation for progressive policy: the free association of employees and their access, through representatives of their own choosing, to administrative officers are desirable in the democratic state; a majority of the employees in any appropriate unit of representation should have the right to speak for all employees in that unit; the affiliation of civil service unions with outside labor groups is appropriate in a democracy; public employees should not have the legal right to strike; employee relations are more a matter of emphasis in personnel administration than of a series of related personnel practices; the proper rôle of the central personnel agency in respect to employee relations is one of stimulation and advice to the operating departments. In their careful analysis of the field, the authors reach many other conclusions of equal interest to the administrator and the theorist. The judicious manner in which the evidence pro and con has been weighed lends authority to these conclusions. The report is an important contribution to the literature of administration in a democracy.

Antioch College. J. DONALD KINGSLEY.

The Impact of the War on America. BY ROBERT E. CUSHMAN AND OTHERS. (Ithaca: Cornell University Press. 1942. Pp. viii. 159, $2.00.)

These six lectures were delivered before undergraduates by members of the Cornell faculty in February and March, 1942. They are based upon the assumption that the United States has long-term interests which should be understood. "The Impact of War on the Constitution" is the subject of Professor Robert E. Cushman's lecture. The greater part of it is devoted, properly enough, to civil liberties. He believes that these liberties will be maintained within the relatively limited spheres in which the Attorney General's office and the courts can act; but he fears repressive legislation and the misdirected activities of super-patriots. Professor Royal E. Montgomery lectures on "The Impact of War on American Labor." He discusses wages, hours, mobilization, and other war labor problems, and warns us that 1942 is not 1917 on the labor front.

In his lecture, "The United States and the British Empire," Professor C. W. de Kiewiet stresses the common background and interests of the inhabitants of the United States and the British Commonwealth of Nations, but his greatest emphasis is upon the point that our interests demand that the Atlantic Ocean remain in friendly hands. Professor Knight Biggerstaff gives "A Reappraisal of the Far Eastern Policy of the United States." The recent failure of that policy he attributes to our dependence on treaties which we were unwilling to implement with force. As for the future, our policy must be based on a strong China and racial equality throughout the Far East. In his "The United States and the Balance of Power," Professor Philip E. Mosely maintains that this country has always had an interest in that balance, but that its failure to recognize its interest caused it to turn its back, or at least its side, to Europe in 1919. We realize today, he says, that we have become a part of the world balance of power. Professor Herbert W. Briggs, lecturing on "The United States and Post-War International Organizations," gives us these words of caution: "It is comparatively easy to draft a blueprint of international order based either on facts as they once existed or on facts as we would like them to exist; but until we can estimate the degree of post-war exhaustion; the consequences of political, economic, and social dislocation; the extent to which whole peoples may be prepared to forego some of the advantages of sovereignty and nationalism in order to gain compensating, but perhaps less obvious, advantages—until the time when these and other factors are more calculable, it will be futile to devise blueprints for the new world" (p. 123). Consequently, he sticks to basic problems and principles; and so do his colleagues.

The lectures are uniform in length, almost models of clarity, and maintain a high standard of objectivity. They are realistic and not without some sparks of life. Intended primarily for undergraduates, they may be read with ease and profit by the general public.

CLAUDIUS O. JOHNSON.

State College of Washington.

Military Law and Defense Legislation. By A. Arthur Schiller. (St. Paul: West Publishing Co. 1942. Pp. xxxiv, 647. $5.00.)

The literature on military law in this country is not extensive and the standard works on the subject are not of recent vintage. The revised edition of Winthrop's *Military Law and Precedents* was published in 1895, and the most recent revision of Davis's *Treatise on the Military Law of the United States* appeared in 1915. Professor Schiller's volume, however, despite the title, is not a treatise but a book of cases and other selected materials, including extracts from the laws and regulations governing the armed forces and the selective service system, and opinions of the Judge Advocate General. It is designed for use as a text in law school courses.

The body of the work comprises four chapters dealing respectively with "The Constitutional Extent of Military Power," "The Army of the United States," "Military Law Proper," and "The Soldier's Civil Rights." The Articles of War, the Selective Training and Service Act of 1940, and the Soldiers' and Sailors' Civil Relief Act of 1940 are printed in an appendix. It may come as somewhat of a surprise to the reader to discover that only 170 pages are devoted to "military law proper," while half again as much space deals with the army of the United States. Under the latter heading are considered such matters as the organization and composition of the army, enlistment of persons not qualified or ineligible, and the construction and application of the conscription acts. This emphasis is perhaps understandable in a casebook, because naturally enough there are many more judicial decisions dealing with this type of question than with matters falling completely within the domain of military jurisdiction.

The area within which the military authorities make—or at least apply—their own law is a large one, as is to be expected. This is both because the civil courts are properly reluctant to intrude upon the sphere of the military and because certain general clauses in the military law itself (such as the ninety-sixth Article of War) inevitably give a great deal of discretion to the military authorities. There is a point, however, at which the civil courts will intervene. The decisions of draft boards, for example, are ordinarily not subject to judicial review, but a plain abuse of discretion, such as refusal to consider relevant evidence, will be corrected by the courts. Courts-martial must be set up and must proceed in accordance with law. The jurisdiction of military authorities is open to question in the courts, where courts are available, although the findings of the military as to the jurisdictional facts are final.

Although the volume contains a large amount of material other than judicial opinions, the question may legitimately be raised whether the subject is not one which calls for an even greater departure from the typical casebook pattern. Many cases which reach obvious conclusions and others which are of only historical interest, having been overruled, might well have been omitted and their substance set forth in far less space. Nevertheless, this timely volume will undoubtedly enjoy a wide adoption and help fill a real need in law school instruction.

J. ROLAND PENNOCK.

Swarthmore College.

State Housing Agencies. BY DOROTHY SCHAFFTER. (New York: Columbia University Press. 1942. Pp. viii, 808. $7.50.)

When the only concern of the public for housing was police power regulation of private enterprise, the rôle of the state as the repository of that sovereign power was clear. In the 1920's, as we fumbled toward a recognition of broader public responsibility, one or two heavily urbanized states served as those laboratories so dear to Louis Brandeis. The public provision of housing was suddenly catapulted forward by the depression as an element in a federal public works program. Almost as soon as it was recognized as a valid public concern, it was clear that it involved expenditures far beyond the capacity or readiness of the states to finance. Housing is thus one of those functions which became affected with a national interest so soon after it was recognized as a public interest that the states were bypassed as major agencies for implementation. By and large, they have been chiefly begged and cajoled into empowering their creatures, the cities, to deal with the federal government.

Some years ago, Professor Schaffter marked out for herself the field of state housing agencies. She has read all the legislative documents, she has frequented housing meetings, she has corresponded and interviewed diligently. She has now produced a volume of over eight hundred pages to demonstrate that this historic development is all wrong, that federal housing agencies have deliberately suppressed the states. "Each state within the United States is a powerful, competent, and wealthy unit, and no possible reason except one can be offered to justify its exclusion from the housing program" (p. 7). "Immediate steps should be taken to insure full state participation in the public housing program" (p. 8).

To support this position, Miss Schaffter rehearses the history of ten state housing agencies in detail—only three of which have really had any life—and treats more briefly of eleven others. Her method of presentation could hardly be less inspiring. She devotes 150 pages to New York. She digests and abstracts every bill introduced (whether passed or not), every legislative document, every report of a housing agency, every legal case, each annual budget. Nowhere is there revealed the single, sharp insight which would have shown the futility of this picking over of dry bones: Governor Smith's Commission on Housing and Regional Planning in 1926 proposed a comprehensive framework for credit, regulation, and promotion of housing; a hostile legislature deliberately hamstrung it, leaving a regulatory body with no credit. Not until 1938 was this mutilation overcome.

Miss Schaffter says that her book is a study in administration. She devotes an entire page to a break-down, year by year for seven years, by eleven objects of expenditure, of the budget of the Delaware State Housing Board—which averaged $4,174.02 a year. She recites the names of all members, past and present, of all state housing boards. Her bibliography of bills, budget recommendations, appropriation acts, reports, and decisions runs to eighty-eight pages.

All this tedious "research" warrants perhaps a monograph of seventy-five pages. Then at least one could say that this facet of the problem had received due recognition. The issuance of an 808-page compilation of working papers like this in war-time should cause concern to the Paper and Pulp Branch of the War Production Board.

CHARLES S. ASCHER.

National Housing Agency.

Will Germany Crack? BY PAUL HAGEN. (New York: Harper and Brothers. 1942. Pp. xvii, 283. $2.75.)

This book describes the changes in Germany since the invasion of the U.S.S.R. Its purpose "is to illustrate and bring the difficulties in which the Hitler régime finds itself into sharper focus." The author uses the pseudonym "Paul Hagen," and he is vouched for by Mr. Elmer Davis in an introduction as "a man whom I have known as a thorough and judicious reporter" for some years. As research director for the American Friends of German Freedom under the chairmanship of Dr. Reinhold Niebuhr, Mr. Hagen has been in direct contact with part of the underground movement in Germany.

The reader will find in this timely volume much valuable factual material about the status of labor, of agriculture, and of business. From it one gets a very complete picture of the effects of the Nazi régime on all classes of German society, as well as a graphic description of the ravages of the New Order in Europe. I find the chapters on labor and agriculture particularly good, probably because the author is more at home in discussing the social effects of Nazi rule than when he deals with governmental and administrative matters. Although his convincing material leads one quite naturally to feel the impending doom of the whole Nazi system, the author is careful to warn the reader that Germany will not fall to pieces from internal causes alone.

A very interesting chapter deals with "The Truth About the Generals'

Revolt," but more evidence is needed before we have the proper basis for a sound judgment on this vital topic. The concluding chapter on political warfare is excellent. Here one finds a well reasoned argument in favor of European federation, and a sound strategy for enlisting the support of what Mr. Hagen calls "the revolutionary potential" in Germany and occupied Europe.

The author believes that any kind of monarchical restoration in Germany would be bad, and he thinks that Russian communism has nothing to offer the Germans by way of a sound solution of their problems. He also believes that German leadership will have to come from within Germany and not from the exiles now residing in this country. He carefully emphasizes that not all Germans are Nazis, and that there is a strong foundation in Germany for a modern democratic state, but not for an old-fashioned nineteenth-century liberal régime.

A very wide range of material is used in the book, some of it old to readers of "Germany Reports" but much of it new. The emphasis is placed on weaknesses in the home front in Germany, and therefore one should not turn to this book for an explanation of German successes. Although the Nazi party is frequently discussed, its place, and the place and importance of that other pillar of the German state—the bureaucracy—are not systematically treated. The book, however, is worth careful study. It is, as the sub-title indicates, "A Factual Report on Germany." It deals realistically with German conditions up to the past spring, and it emphasizes many of the factors which will help determine both the outcome of the war and the nature of the peace.

JAMES K. POLLOCK.

University of Michigan.

The Guilt of the German Army. BY HANS ERNEST FRIED. (New York: The Macmillan Company. 1942. Pp. xiv, 426. $3.50.)

There are many explanations of National Socialism, most of which contain elements of truth. The present book, written by a Viennese scholar now associated with the Graduate Faculty of the New School for Social Research, focuses its attention on the responsibility of the professional army officers for Hitlerism. The thesis is not original, but it is here convincingly presented, with much new evidence.

Dr. Fried holds that German fascism and militarism are the same phenomenon. "National Socialism represents resurgent German militarism, because National Socialism was the most effective mechanism . . . for the reëstablishment of the strength, the influence, and the program of the German generals" (p. 6). Such a resurgence got started in the early post-war years because of the delayed demobilization of the career officers. The rank and file of the army who wanted peace went home as quickly as possible, but the officers who wanted power did not demobilize either in spirit or in fact. Whether in the active service of the *Reichswehr* or "retired" on the very generous pensions provided by the Weimar Republic, they remained subversive and hostile to the democratic régime, although operating under the equivocal slogan—"political neutrality of the army." The author's statistics on the number of professional officers and the case studies as to what they did after 1918 are extremely illuminating.

Another valuable section of the volume deals with the shock trooper and the free corps. The officers formed an unusually large proportion of the shock troops developed during the First World War. Shock troop traditions of brutality, contempt for foe and friend alike, and complete disregard of all conventions were transmitted to and perpetuated by the free corps of the early post-war years, and were finally crystallized in the ruthless brown and black shirted battalions of National Socialism, Much has been written about the proletarian character of the S. A., but Fried shows conclusively that the ex-army officers predominated in the posts of command. The same observation can be made of the National Socialist Labor Service. However, it does not follow that the party is merely the instrumentality of the army. Both are "tools each of the other, but neither is master of the other" (p. 355).

Dr. Fried concludes his excellent historical analysis with a program for the future which will avoid the mistakes of last time. The aim of World War II is not primarily to disarm Germany, but to destroy German militarism. Allied occupation of Germany will not accomplish this, but is only too likely to lay the basis for a new militaristic revival. The best protection will be for the Germans themselves to develop a democratic army from which all the old careerist elements have been eliminated. It is admitted that such a task will not be easy.

A reading of the book suggests several comments. While Adolf Hitler's name appears on various pages, it may be asked whether the author has done full justice to Hitler's evil genius. One can reject the great-man theory of history and still hold that without Hitler there would have been no Third Reich. Secondly, the responsibility of the Allied Powers, particularly in the crucial years from the Armistice through the occupation of the Ruhr, should not be overlooked. It was then that the foundations of resurgent militarism were laid. Finally, while agreeing that the military occupation of all Germany is undesirable, the reviewer does not see how a military occupation of the eastern and western frontier areas can be avoided, at least during the transition period. In spite of these criticisms, Dr. Fried is to be commended for his interesting, scholarly, and timely study.

ROGER H. WELLS.

Bryn Mawr College.

Democratic Ideals and Reality. BY SIR HALFORD J. MACKINDER. (New York: Henry Holt and Company. 1942. Pp. xxvi, 219. $1.90.)

Geopolitik: Doctrine of National Self-Sufficiency and Empire. BY JOHANNES MATTERN. (Baltimore: Johns Hopkins University Press. 1942. Pp. 139. $1.50.)

Mackinder's book, one of the germinal works in geopolitics, first appeared in 1919. In it the author, a prominent professor of geography in the London School of Economics, set forth his views of the "realities" which the then current "democratic idealism" must face if post-war reconstruction was to establish bases of permanent peace. The book is now reprinted unchanged, save for a foreword by Major George Fielding Eliot and an introduction by Edward Mead Earle, as if to remind us that since "democratic idealism" did not successfully cope with "reality" at the close of World War I, the same problems again face us.

It is not often that a book dealing with the fluctuating subject-matter of international relations can stand reëxamination after a quarter-century. That this book does so successfully is due to the unusual insight and prescience of the author, and to the fact that its views are derived from an Olympian contemplation of the great elemental inertias or "constants" of human life—population, geographical location, productive power, and the complex characteristics of nations as "going concerns" (a favorite phrase of the author).

The "realities" which must be faced are certain inexorable geographic facts which sooner or later must be appreciated by peoples as well as by diplomats. These are that the land-connected continents of Europe, Asia, and Africa constitute a single unit—the World-Island—and the continents of North and South America and Australia are merely satellite Islands. Four-fifths of the world's population, area, and resources are in the World-Island. The key to the control of the World-Island is the Heartland, a region occupying, roughly, Eastern Europe. The great reality which must be soberly faced by treaty-makers is in the formula: "Who rules East Europe commands the Heartland; Who rules the Heartland commands the World-Island; Who rules the World-Island commands the World." Such a domination of the World-Island could easily be the basis for an invincible sea-power; for sea-power consists in the number and location of secure bases. From the landman's viewpoint, the logic of such unity is even greater; for while the network of land transport runs, or will run, through the Heartland, the segments of the World-Island are quite separate save as they meet in the same area.

To the author, the historic rivalry of Germany and Russia for the control of the Heartland is explained by these theories. As crystallized in this book, they are said to have shaped the thinking of Haushofer and other dominant figures among German geopoliticians. Indeed sections of the book read startlingly like a blue-print of current German plans of conquest, including such a step as the seizure of Greece purely as a detail in military strategy.

Despite the clarity with which the author analyzes the problem, his suggestion for its solution is disappointing: the Heartland must be divided among three, not two, state-systems. A group of buffer-states must be set up between Germany and Russia. Unfortunately, that proved not to be the solution. Convincing as is the author's review of "realities," his suggestions for their reconciliation with "idealism" are not so fruitful. Perhaps it is because the statement of the problem has not taken sufficiently into consideration factors of personality, invention (airpower?), or chance. Nevertheless, this remarkable book should be required reading both for those whose fingers itch to re-shape the world and for those who do not believe it can be done at all.

Professor Mattern's book is less an exposition than a moral evaluation of geopolitics. It is not far wrong to say that it is an effort to debunk geopolitics. This he does by showing in several chapters that geopolitics is not a current German discovery, that its literature does not begin with Haushofer but with Gobineau, Chamberlain, Ratzel, and even earlier writers. In fact, the whole conception is the old device of empire-building masquerading under a new name. The author shows that currently geopolitics, while it differs from imperialism by such complicating factors as totalitarian governments, industrialization, and the demands for economic self-sufficiency, is basically the same thing.

After performing the useful services of robbing geopolitics of novelty and glamour and of reviewing the literature of the field, it is disappointing that the author cannot offer a more hopeful prospect for other bases for the guidance of national policy. If geopolitics is less than ideal morally, the problem is to find ways and means by which the "have" and "have-not" nations may live together in peace. Otherwise we are forced to accept the old adage that what cannot be cured must be endured. While Professor Mattern is entirely convincing as to the impossibility of obtaining peace through doctrines of geopolitics, it is depressing that no hope is held out for better foundations of international relations.

HAROLD W. STOKE.

University of Wisconsin.

The Problems of Lasting Peace. BY HERBERT HOOVER AND HUGH GIBSON. (Garden City, New York: Doubleday, Doran and Company, Inc. 1942. Pp. viii, 295. $2.00.)

Winning Both the War and the Peace. EDITED BY ERNEST MINOR PATTERSON. Annals of the American Academy of Political and Social Science, Volume 222. July, 1942. (Philadelphia: American Academy of Political and Social Science. Pp. vii, 252. $2.00.)

The first of these two volumes boasts an unusual authorship. Two figures recently prominent in American public life, one as cabinet officer and president, the other as diplomat, have tried to investigate the technique of peace-making. They write, not as men who actually wrestled with such problems, but as lay students of history and politics. No diplomatic revelations appear. The book is for the common citizen—simple, clear, matter-of-fact, and a bit repetitious, since a thesis is to be upheld. The thesis is the familiar one that throughout modern European history the forces tending to cause war have been stronger than those making for peace. Quite possibly they may triumph again after the second World War. In some detail, the operation of these forces, designated as ideologies, economic pressures, nationalism, militarism, imperialism, and the complexes of fear, hate, and revenge, is traced against the historical background of three hundred years, with emphasis on the past quarter-century. If the argument lacks novelty, it is none the less sound and should not be disregarded by any would-be architect of a warless world. To this simplification of history, two-thirds of the book is devoted. In the few remaining chapters, ways and means of making peace are examined. In general, they approximate the Wilsonian program of 1919, with emphasis on political democracy, economic liberty, and avoidance of the errors of Versailles. Much wisdom is here. But is the program adequate to the needs of the 1940's? Is not the world experiencing a revolution which calls for new designs in international relations? In any case, the forces of war and the conservative tradition in politics and economics must be confronted in any scheme for genuine peace. It is the merit of the book to stress this fundamental fact.

The April meeting of the American Academy of Political and Social Science considered the problem of winning the war as well as that of making peace. Included among the speakers was an array of government officials, chiefly from abroad, as well as several journalists and professors. Concerned chiefly with problems of the week or month, the journalists contributed little of permanent interest. The officials generally were under the usual restraints, and their papers are informative mainly as they reflect the nationalism of their respective peoples. Notable exceptions were the Russian ambassador, who bluntly appealed for immediate aid to Russia, and Jan Masaryk, whose enlightened views contrasted sharply with the strident nationalism manifested by some others of the official group. Taraknath Das presented an excellent analysis of "Asia's Part in

War and Peace." The most penetrating discussions were those of D. W. Brogan on "A Political Scientist and World Problems" and Nicholas Doman on "The World We Approach." Doman regards nationalism as destined to be replaced by a democratic federation of states possessing political and military power. No speaker appeared to doubt that the chief issue of the war is freedom or slavery. In an appendix appear several papers on post-war economic problems in Southern California.

G. LEIGHTON LAFUZE.

John B. Stetson University.

Problems of Post-War Reconstruction. EDITED BY HENRY P. JORDAN. (Washington: American Council on Public Affairs. 1942. Pp. xx, 292. Cloth $3.25, Paper $2.75.)

Immediately after the outbreak of the war in Europe, a seminar was set up in the graduate school of New York University for the study of post-war reconstruction problems. The present symposium makes its appearance as an outgrowth of studies centered in that seminar. The nature of the volume is indicated by its title. Thirteen contributors pool their efforts to analyze problems, which, in the words of the editor, "ought to form part of any serious discussion of the peace to follow the Second World War." No pretense is made at facing all possible, or even all major, issues. No consideration is given, for instance, to the problems of the war in Asia as such. Whatever may be the effects of the fall of Singapore upon the relations of the subject peoples of the East to the imperialist states of the West, they are not here faced. It is to the problems raised by the war in Europe and its repercussions in the Western Hemisphere that the volume addresses itself. Its purpose, again quoting the editor, "is to raise issues and problems—not to dispose of them." Within the limits thus set, the task has been competently, and in spots brilliantly, done.

The book is divided into five parts. Clyde Eagleton and Howard Becker open with an analysis of problems, general in nature, under the heading "In Quest of Peace." This is followed by an attack upon specific "Problems of the Old World" by Kenneth J. Deacon, Oscar J. Falnes, and Hans Aufricht, and of "The Western Hemisphere" by Donald W. McConnell, Erich Hula, and Henry P. Jordan. Four contributors—Lois MacDonald, George S. Hirschland, Richard Schueller, and Harvey Pinney—treat problems of "Government and Business." Charles Hodges concludes on "The Paradox of Power Politics."

Among the problems given thoughtful consideration is that of the position of the state in the forthcoming peace. There is a disposition on the part of some of the writers to assume that the growing interdependence of peoples has made both the territorial sovereignty (with its predilection toward "national introversion," as Dr. Hirschland styles it) and the state system obsolete. As Professor Jordan sees it, the present upheaval not only emanates from the state system, but is also symptomatic of its eclipse. On the obsolescence of the state, it is Professor Eagleton, however, who is most persuasively articulate. National sovereignty, he says, is no longer sufficient in itself, and human beings must go beyond the state in search of an instrument more capable of caring for their needs. He does not doubt that war can be brought under control, but only by means of effective international government in which the right and power of coercion are denied to member states in the community of nations. He says flatly that "there is no other solution." Professor Becker, however, warns that the concept of sovereignty has not lost its grip. Whatever the state may have lost of its previous justification, he sees little likelihood of its early disappearance.

The book ends on a pessimistic note. Professor Hodges sees in the coming peace an armed truce dictated by the momentary emotions of victory in which the perpetuation of the war system will be camouflaged behind legal and well-meaning abstractions as a just peace.

RALPH A. NOREM.

Oshkosh Teachers College.

Agenda for a Post-War World. BY J. B. CONDLIFFE. (New York: W. W. Norton Company. 1942. Pp. 232. $2.50.)

This book is a practical and sober discussion of the troublesome issues in international trade and finance which the victors will have to tackle once the war is won. It contains a program of action which avoids utopian or doctrinaire extremes; it will not satisfy the Socialist planners or the exponents of *laissez-faire,* if such there be. What it proposes is, in the words of the author, "a new framework of regulation within which trade may again proceed freely."

To move abruptly from war-time control to a competitive economy, Professor Condliffe states, would be to invite disaster. *Laissez-faire* cannot restore a sound international equilibrium of prices or prevent the kind of strains on the balances of payment which, in the past, have driven countries into policies of restrictive nationalism. Demobilization of war industries, the opening of new frontiers for investment, the disposal of rising agricultural surpluses, and the necessary extension of social security will call, so the author explains, not only for intelligent government policies but for close collaboration between governments. He would prefer to see tariffs and monetary policies directed by international institutions, such as an International Tariff Commission, with power to impose sanctions, even against recalcitrant great powers. But realizing the difficulties of establishing and controlling such bodies and of getting the United States or any other powerful nation to give up its autonomy to a supra-national body, he calls upon Great Britain and the United States to harmonize their efforts, to adjust their currencies, and to restore an expanding system of multilateral trade by common action. Nothing is said of the future rôle of the Soviet Union.

If Professor Condliffe lays emphasis on the need of control, both national and international, particularly during the transition period, he does not therefore expect salvation from extensive regulation. International commodity agreements, he points out, have often enough aggravated rather than solved the problem of surpluses. Uncoördinated and restrictive national policies have intensified the crisis in international trade, and have certainly not prevented in the past the fatal excesses of inflation and deflation. The author expects a great revulsion against bureaucracy in all its forms. "This," he exclaims, "is not a war to make the world safe for bureaucracy."

The *Agenda* is not a blue-print for a peace settlement. Political questions are touched only in so far as they impinge on economic reconstruction. Thus the regional idea, "tainted," as the author says, "with the continentalism of Geo-politik," is condemned because it is impossible and undesirable to carve out limited areas of economic self-sufficiency.

The proposal to make the peace "politically hard but economically generous" and to interject a transition period before drawing up final peace terms has been heard before; but Professor Condliffe adds a useful warning against a "peace of vengeance and hatred, however justified," and calls for a rapid and clear-cut decision on boundaries and other purely political matters.

The author throws much light on a series of economic problems which the peacemakers will have to consider and makes a strong case for international economic collaboration and for "collaborative machinery," without indulging in internationalist wish-dreaming. Convinced that other countries will go as far as, but no farther than, the United States in accepting limitations of economic sovereignty, he appeals to the American people to renounce the traditional but shortsighted privilege of shaping commercial, monetary, and credit policies without prior agreement with others.

Anyone interested in the shaping of the post-war economic settlement will wish to consult this stimulating and realistic *Agenda*.

ARNOLD WOLFERS.

Yale University.

Protection of Coastal Fisheries Under International Law. By Stefan A. Riesenfeld. (Washington: Carnegie Endowment for International Peace. 1942. Pp. xii, 296. $2.00.)

This investigation was originally undertaken to aid Professor Joseph W. Bingham in the preparation of his report on the legal status of the North Pacific fisheries—a report due to the initiative of the Institute of Pacific Relations. Dr. Riesenfeld was invited to help in collecting the material, and the task was considered to make requisite an examination of the question of coastal fisheries under international law in general. The result of this investigation does not, the author modestly states, "pretend to be more than an annotated digest and bibliography." Notwithstanding this disclaimer, the work may well serve as a model for students of international relations in the pursuit of their investigations and the formulation of their results.

The author divides his study into three parts devoted to the "three main sources: the works of legal scholars, state practice, and international adjudications." But with a fine sense of proportion and of historical values he limits his exhaustive investigation to the last hundred and fifty years and gives only a brief discussion of the chief authorities of an earlier date. This limitation is justified because "the existence of a right to coastal fisheries is connected intimately with the doctrine of the freedom of the sea and territorial waters, which did not really crystallize until the beginning of the eighteenth century." Another reason given is that the admirable study of Professor Percy Thomas Fenn published in 1926, entitled *The Origin of the Right of Fisheries in Territorial Waters*, "covers the main text writers from classical times to the Peace of Westphalia (1648), and indicates the roots of the doctrines which govern modern practice and thought."

Professor Riesenfeld does not fall into the present erroneous tendency to underestimate the importance of the influence of the text writers, and has given a very extensive collection of extracts, which are thus made convenient to examine and illuminating to consider. The course of this exegesis he interlards with his own valuable comments, which reveal the depth of his science and the breadth of his views. Notwithstanding the recognition of the importance of the views of writers, the space devoted to state practice is appropriately greater. In a study of this rather technical nature, the author is no doubt justified in giving the extracts in the original language unaccompanied by an English translation.

In a careful study of "The Extent of Jurisdiction in Coastal Waters," published four years ago, Commander Christopher B. V. Meyer pointed out that the development of the international rule in regard to the limit of territorial waters has been influenced primarily by considerations of the need felt by the great maritime states to determine the limits within which the respect for, and enforcement of, neutrality would be required. More recently, the increased importance of coastal fisheries and the need to provide for their protection has brought into play new considerations, as has the growing need to prevent smuggling. Professor Bingham truly says in his report: "If the exercise of governmental power beyond the three-mile limit is necessary to protect those fisheries against damage, the exercise of that power should be legitimate, just as a similar exercise of power in protection of the revenue laws or defense of its neutral coasts against belligerent activities or unlawful depredations of other sorts is legitimate" (p. 41). In sum, the question of territorial waters would seem conceived to test the inadequacy of the whole theory of absolute sovereignty and its correlative application to marginal seas.

In his *Law of Territorial Waters and Maritime Jurisdiction*, Professor Philip C. Jessup has said: "International law itself is a restriction upon and a denial of absolute sovereignty," and he has made a real contribution and offered a solution of one phase of this problem with his proposal to differentiate between the right of maritime jurisdiction and the right of innocent passage. This does not, however, meet such a problem as the need to protect our runs of Alaska salmon from the destructive Japanese fisheries on the high seas. Professor Riesenfeld does not attempt to formulate principles appropriate for a solution of the difficulty, but he does offer certain helpful suggestions.

Truly the regulation of territorial waters and of coastal fisheries is seen to be well adapted to show up the weaknesses of the theory of absolute sovereignty and to demonstrate the need of the limitation of national rights when necessary to safeguard a common interest of all states or to prevent disproportionate damage to the national or vested interests of one of them.

After an examination of this material and enlightened comments, it is interesting to read the remark of Lord Alverstone in the course of his decision in the West-Rand Central Gold Mining Company Case to the effect that the limits as to territorial waters is one of the few rules of international law which is "least open to doubt and question." Compare this with what Dr. Riesenfeld writes (p. 280): "Moreover, there is not a single nation which has always and for all purposes adhered to the three-mile rule." And this investigator of the topic finds (p. 279) that all three groups of the authorities surveyed, text writers, state practice, and international adjudications, indubitably confirm that the three-mile rule is not so well settled as is sometimes asserted. The solution of this difficult problem is, as the author states (p. 282), to "be found only in the application of international law as a means of adjustment of the various national interests in the spirit of a community of nations;" in other words, the rule of reason, the general principle of tolerance which lies at the basis of every society—that each in the pursuit of its apparent interests or rights should evince a due consideration for the relative importance of the rights and interests of his neighbor, which is equivalent to the recognition of the obligation to accept a reasonable compromise.

ELLERY C. STOWELL.

The American University.

The American Way of Life; Our Institutional Patterns and Social Problems. BY HARRY ELMER BARNES AND OREEN M. RUEDI. (New York: Prentice-Hall, Inc. 1942. Pp. xxi, 802. $5.00.)

According to the preface, "this book is offered as an introduction to the state of American life in the current period of war and world change. It covers both our leading institutions and the outstanding social problems which beset us . . . in the most critical and dynamic period of human experience," beyond which we have the choice of "either utopia or social collapse." But the happier of these alternatives cannot be ours if as heretofore "in an age of dynamos, we seek to direct society by windmill thought and action in the institutional realm. This so-called cultural lag lies at the heart of all our ills today." On page 691, the authors say that "there is only one way which will enable us to preserve our democracy and liberty and yet solve our economic and social problems. This is what we have called the Middle Way."

While the facts, the sequences, and the ideology of this volume are derived from two recently published books by Dr. Barnes—*Society in Transition* and *Social Institutions*—and his forthcoming *Programs of Social and Economic Reconstruction*, the joint authors have produced a work which is considerably de-Barnesed.

The volume is essentially an introductory orientation in contemporary American problems. It gives no unified, generalized picture of the principles and ideals on which the American way of life is built and in which it finds its compass. Rather, it deals with the evolution of society in general and American society in particular and the vital problems with which these societies are struggling, among them waste and conservation, capitalism, politics, poverty, crime, minority races, dictatorship, war and peace. These problems are grouped into seven parts, preceded in Part I by three chapters on the Historical Background and followed in Part IX by three chapters on Programs of Economic and Social Reconstruction.

What is undertaken is interestingly and on the whole successfully done. There are occasional factual errors. As an example may be cited the summary of the recent immigration laws, on page 137, in which the emergency law of 1921 and the temporary part of the law of 1924 are badly confused with the largely omitted provisions of the permanent national origins law. While the extreme difficulties inherent in the task of apportioning the available space among the numerous problems considered are obvious, the treatment seems distressingly inadequate in several places, as for instance the little fragments of which the description of the governmental structure of the United States consists on pages 261 and 262. The style and manner of presentation are clear, simple (in some places even elementary), and reasonably objective, but still provocative. Pictures, graphs, and charts enliven and elucidate the text. Closing each chapter is a helpful summary. At the end of the volume are twenty-six pages of selected references and a general index.

This is a first-rate book, valuable both to the general citizen and to the academic student in senior high school or junior college either as a textbook or as general required reading.

ARNOLD J. LIEN.

Washington University.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

The title of Professor Thomas H. Reed's *Federal-State-Local Fiscal Relations* (Municipal Finance Officers Association of the United States and Canada, pp. iv, 61, $1.00) is somewhat misleading. Instead of examining the intricate fiscal relations that have grown up between our three "levels" of government, Professor Reed, out of the richness of his experience, has written a provocative discussion of municipal problems. His thesis may be stated as follows: (1) demands upon local government for services have increased more rapidly than have local sources of revenue; (2) the fiscal plight of the local governments can be blamed in part upon the federal and state governments, which have imposed burdens upon the localities, have preëmpted some sources of revenue for themselves, and have placed limitations upon the power of local governments to tax; (3) grants-in-aid, instead of easing the situation, have made it worse, since they usually require the local governments to match the grants on some basis, thus increasing the amounts which must be raised by local taxation; (4) in addition to increasing financial burdens, grants-in-aid have increased state and federal supervision over the localities, thus threatening the foundations of local self-government; and (5) the national and state governments should make more generous grants to the local governments, but should attach fewer conditions as to matching and purpose of expenditure. This booklet was written as a report for the Committee on Local Government Activities and Revenues of the Municipal Finance Officers Association of the United States and Canada, and was written entirely from the viewpoint of a municipal official. The political and financial problems of the national and state governments were ignored altogether, and little recognition is accorded to the natural reluctance of the nation and the states to appropriate money for the use of local units without some stipulation as to the manner and purpose of expenditure. The conclusions will, no doubt, meet with hearty approval from local officials who would like to be able to spend more money, with less state and federal supervision, but without having to accept the onus of increasing the local tax levies; but they will scarcely satisfy the student who is interested in the broader aspects of public finance and public administration.—ROGER V. SHUMATE.

While seeking to present a timely examination of that important American political institution, the free ballot, Spencer D. Albright has produced a scholarly little volume in his *The American Ballot* (American Council on Public Affairs, pp. 153, $2.50). The student of American government will find this a useful manual of ballot forms and election laws. The general reader may find it difficult, because the text is literally peppered with facts and figures setting forth the variations in ballot features found in the states. Dr. Albright has compressed a large amount of research material in a comparatively small space. As the author indicates in his chapter on "Ballot Patterns," the subject is complicated because "the contents and arrangement of the face of the paper ballot used in general elections differ in each of the forty-eight states." The adaptation of the Australian ballot to the needs of the American states is described at some length. In a chapter devoted to voting machines, he carefully weighs the advantages and disadvantages of their adoption. Although the writer apparently favors voting machines, he avoids any very enthusiastic reference to their use. Problems in their operation and legislation permitting their adoption are explained with clarity. In the chapter on "The Ballot in Presidential Elections," the author makes a strong case for the presidential short ballot, wherein the names of presidential electors are left off the ballot and the names of presidential and vice-presidential candidates are substituted. The two chapters devoted to the primary ballot and recent trends are the easiest to read. One trend noted is that general election ballots are growing shorter. Independence in voting is being encouraged by increased use of the open primary and of non-partisan elections. Little discussion is given to balloting on measures other than to their positions on the ballot paper. The various types of ballots and certain trends in ballot forms are presented by means of helpful samples and tables.—WINSTON W. CROUCH.

It is peculiarly fitting, at a time when the rights of minorities are being blotted out by war, that the United States should not only reassert adherence to and faith in the principles of democratic government, but also give actual proof of sincerity by adopting an enlightened policy of governance for our oldest minority group, the Indians. To aid in the implementation of this policy, the Department of the Interior has published a *Handbook of Federal Indian Law* (Government Printing Office, pp. xxiv, 662, $2.00). The text was prepared by Felix S. Cohen, an eminent authority in the field of jurisprudence and chairman of the Board of Appeals in the Department. The foreword was written by Secretary Harold L. Ickes, and the interpretative introduction by Nathan R. Margold, solicitor for the Department. The subject-matter of the chapters falls into the following general fields: the class of persons and the places with which the federal Indian law deals; the basic strands of development—administration, treaty-making, and legislation—that make up the federal Indian law; the governmental source of legal relations; substantive rights, powers, privileges, and immunities of parties and of individuals; problems of court jurisdiction in the field of criminal and of civil law. The Pueblos of New Mexico, the Indians of New York, and the natives of Alaska are treated in separate chapters. In the final chapter, the author discusses special laws relating to Oklahoma. The discussion throughout is completely documented. The supplement contains a tribal index of materials on Indian law, tables of statutes and treaties, federal cases, Interior Department rulings, Attorney-Generals' opinions, and an exhaustive bibliography. The scholarly study not only reveals what the law relating to the Indian is today, but also shows the antecedent conditions out of which it has evolved. For the Indian, the *Handbook* will be a valuable guide in determining his rights and privileges, and for the administrators of the Indian Service it sets a high standard of attainment. To the laymen, it will give a truer perspective and a better knowledge of the Indian, whose legal position in the scheme of our government is so little understood and even less appreciated.—JOHN P. SENNING.

The first edition of *A Diplomatic History of the American People* (F. S. Crofts and Co., pp. xxvi, 864, $4.25), by Thomas A. Bailey, was published in 1940. The present new edition adds to the usefulness of the book by the insertion of two new chapters dealing with our foreign relations from September, 1939, to our entry into the war in December, 1941. Only minor changes have been made in the other chapters. A bibliographical appendix has brought the reference materials up to date. The two new chapters deal with a highly controversial period of our diplomacy in a dispassionate manner which is most creditable, and they are, on the whole, a satisfactory account of those two stormy years. If the author has slighted any part of the story, it is in describing our Latin-American relationships. Following his approach throughout the book, Professor Bailey has given a great deal of attention in these two chapters to American public opinion in relation to the war. His summary of "Why the War Came to America," in the final chapter, is a convincing statement of the American people's fear of Hitler and their suspicion of his ambitions in this hemisphere. The most significant contribution of both editions of Professor Bailey's book is his stress upon public opinion in relation to foreign policies. It is doubtful, however, whether the contents of the volume support the thesis stated in the preface that in a democracy "public opinion determines fundamental policy." The author rarely tries to show that a foreign policy arose in answer to a popular demand for it. He is able to show that the negotiation of the Pact of Paris in 1928 was stimulated by a lively public interest, but he admits that press opinion and polls of public opinion were often at variance with policies, as in the issue of American membership in the World Court. On most issues, it is, of course, impossible to give any statement of dominant American opinion. In fact, the volume seems rather to support than deny the doctrine that foreign policies, even in a democracy, come from foreign offices rather than from the people. Professor Bailey's stress upon newspaper opinions, polls of public thinking, and public speeches is none the less a contribution. It gives the subject a reality often lacking in textbooks. Problems of foreign policy are vitalized more than is possible when official documents, with all their abstractions, are relied upon as the main source. Coupled with an entertaining style, this approach has produced a text of unusual appeal, one of the best in its field.—NORMAN L. HILL.

Students of American government, teachers who try to interpret current affairs, and citizens who want to know exactly what changes the war has wrought should be grateful to David O. Walter for summarizing the "principal statutes, orders, court decisions, and statements of policy" and organizing much fugitive information in *American Government at War* (Chicago: Richard D. Irwin, Inc., pp. x, 235, $1.25). In the mobilization of economic resources to meet the exigencies of war, the government, inexperienced in such national planning, uncertain of the ultimate needs, and reluctant to adopt dictatorial methods, has done a lot of fumbling which is indicated by the numerous agencies with interlocking personnel and overlapping authority. Meeting such a dire emergency without violating the limitations of responsible democracy has raised many questions of legality, but the war powers of Congress and the President have been interpreted broadly enough to justify conscription of men for military service, allocation of manpower in industry, restriction of aliens, suppression of sabotage, censorship of news, curtailment of civil liberty, control of municipal functions, and the formation of military and economic alliances with foreign countries. The chapter on the impact of war on state and local governments, with special reference to civilian defense, was written by Dr. Walter's colleague, Professor Lashley G. Harvey, also of the University of New Hampshire. The book is so tightly packed with facts that there is little room for comment or interpretation. It is valuable for reference, but hard to read because the details obstruct the general view. Perhaps the chapters on aliens, civil liberties, and the political system in war-time should be noted as exceptions. Foreign relations are described under the suggestive title of "United Nations." Several charts of administrative organization are illuminating, though they soon become obsolete. Indeed, this paper-bound volume is so useful that revised editions ought to be published frequently.—John Ely Briggs.

The expansion in recent years of the scope and authority of administrative tribunals throughout the nation has resulted in increased efforts on the part of extreme legalists to bring complete judicial review of both law and fact over all administrative decisions. These efforts have not resulted, as was their original goal, in the enactment of legislation burdening administrative agencies; the net result rather has been the precipitation of exhaustive official examinations of administrative procedures on both national and state levels. Such a study is Robert M. Benjamin's *Administrative Adjudication in the State of New York* (Albany, N. Y., Report to Governor Herbert H. Lehman, pp. 369). The study was made under the Governor's authorization and was the work of a sizeable staff headed by the author. The report is introduced by a chapter of general conclusions and recommendations. Short chapters deal with quasi-legislative procedure, judicial review, and a most interesting recommendation for a division of administrative procedure appended to the Executive Office and performing a continuous research and advisory function for the whole of the administrative branch. Three-fourths of the volume is devoted to a comprehensive analysis of quasi-judicial procedure. The author reaches many constructive conclusions, too numerous and involved for discussion here. The treatment is specific, replete with illustrations from the administrative law and experience of New York. Administrative law is more advanced and administrative experience is richer in New York than in most states. Other states, nevertheless, have much to learn from this report. In particular, they can learn constructive solutions for many perplexing administrative problems. In the large, they may see that the true solution of the many complexities arising in administrative law cannot be achieved by yielding to nostalgic yearning for the simple day when the courts alone exercised judicial functions.—Joseph M. Ray.

Washington-Field Relationships in the Federal Service (Graduate School, U. S. Department of Agriculture, pp. 60, $0.35) is an extremely good, though brief, collection of common sense essays on an ever-vital subject. Donald C. Stone vividly discloses the viewpoints of both field officers and

Washington officials in a "tour" of the offices of representatives of each group. Earl W. Loveridge and Peter Keplinger discuss Washington-field relationships in a relatively well-established federal agency, the Forest Service. W. L. Mitchell does the same for the much newer Social Security Board. James W. Fesler concludes the pamphlet with a provocative discussion of interdepartmental relations in the field service of the federal government. The literature on Washington-field relations is still meagre in comparison with the immensity of the problems involved. This series of lectures adds one of the best down-to-earth contributions to the accumulation known to the writer. Each of the contributors has evidently been on the scene of action sufficiently long to be able to give a competent report of his observations. Unlike some of the literature in the field of public administration, this series of essays takes on no high-flown academic atmosphere. Instead, it presents a picture of the problems and complexities of increasing centralization in a manner that will be comprehensible to academicians and government employees alike.—CLAUDE E. HAWLEY.

Parity, Parity, Parity (Harvard Committee on Research in the Social Studies, pp. xi, 367, $2.00), by John D. Black, deals with a burning issue while the conflagration is raging. Its timeliness unavoidably places the author at certain disadvantages in that the rapidly changing scene makes some of his material out of date before the book reached its readers. The advantages of such a procedure greatly outweigh this handicap. The author has presented the results of his findings on a highly controversial question in time for consideration in the making of pressing policy decisions. The material is highly technical, but it is put up in the free flowing style of an accomplished journalist, including catch phrases, jests, and quips—some with barbs. Indications are that the book was written for laymen, including members of Congress. But the layman, including members of Congress, are likely to experience some little confusion over the great array of analytical data accompanied by the inevitable qualifications of the economist. The author concludes that the present method of determining parity works badly and leads to confusion. A whole array of substitutes are analyzed. "Necessary price"—a price necessary to induce the desired output—is favored as the best war-time substitute. Necessary prices are flexible prices designed to meet rapidly changing conditions. Little mention is made of the tendency for such a plan openly to invite pressure groups to intensify their battles in Congress and in the offices of the bureaucrats. The book makes a substantial contribution to a clearer understanding of the relative positions which agriculture, capital, and labor have occupied, and now occupy, in the nation's economy.—ASHER HOBSON.

Young People in the Courts of New York State (Legislative Document, No. 55, 1942, pp. 309) is the fifth annual report to the legislature of the state of New York by the joint legislative committee to investigate children's court jurisdiction. This volume summarizes the discussions and findings of the earlier reports and presents recommendations arising from the deliberations of the joint committee for the five-year period (1938–42). An important section of the report reviews the legislative efforts of the committee and includes not only the texts of the bills enacted by the legislature but those that failed of passage during this period. The committee has rightfully recognized the indivisibility of the problem of juvenile delinquency and youthful criminality. It has, however, confined its attention to the two major considerations of increasing the age jurisdiction of the children's court and the problems of the adolescent offender. The committee specifically recommends that the age be maintained at the present level of sixteen years, although the tendency throughout the country during recent years has been toward raising the age jurisdiction of the juvenile courts. The committee prefers a system of youth courts with a socialized procedure to deal with the adolescent offender between the ages of sixteen and nineteen. In reaching its conclusions, such relevant matters were considered as the responsibility of the schools, the contribution of probation, and the effectiveness of the reform and correctional institutions in the state. The recommendations were made in the light of the preëminent position the state of New York occupies in the field of social legislation. It is therefore regrettable that in 1942 the New York legislature did not enact into law the more important recommendations of its committee. The war has highlighted this problem of delinquency and crime among minors. With the background presented and the problems set out by the committee, the state should lose no time in meeting a problem that becomes more acute each day.—BELLE ZELLER.

The History of Public Assistance in Chicago, 1833 to 1893 (University of Chicago Press, pp. ix, 183, $1.50), by James Brown, adds another study on public relief administration to the already sizable list of such monographs edited by the faculty of the School of Social Service Administration at the University of Chicago. This study shows the growth over a sixty-year period in public expenditures for the care of the necessitous and the inadequacies of administration. Despite the enormous increase in amounts spent, administration by committees rather than by responsible executives and political appointment of personnel continued. In contrast with many large Eastern cities which despaired over the graft and inefficiency of public officials and so did away with public relief, the principle of public relief for the care of the needy persisted in Chicago. Private agencies in Cook county restricted their services to designated groups. The report criticizes the lack of interest of the executives of these agencies and their influential boards in the administration of public assistance. The significance of this monograph for political scientists lies in its discussion of the deficiencies of some types of governmental organization for competent administration of public assistance. The problem is still with us. Public assistance statutes in many states continue to provide inadequate structure for wise administration of the millions of dollars spent on the various classes of persons needing public assistance.—HELEN I. CLARKE.

Books about Lincoln have been and will continue to be legion. But David M. Potter's *Lincoln and His Party in the Secession Crisis* (Yale University Press, pp. x, 408, $3.75) will always be ranked as a job of sound scholarship and penetrating analysis. At present, it is the authoritative work on the subject. Dr. Potter begins his main story with the critical year 1860 and ends it in April, 1861, when the guns at Sumter ended the secession drama. The author's thesis can be summarized briefly. At first, the Republicans would not believe that the Southern states would secede. When secession did take place, they were astonished. They thought that a minority of fire-eaters had seized control of the lower South. If the Republicans manifested an attitude of forbearance and the Administration avoided any acts that would create friction, the majority of Southern Unionists would eventually resume control and bring their states back into the Union. "Peaceable reconstruction," based upon an unrealistic analysis of the Southern situation, was the Republican formula to preserve the Union. This blind faith in Southern Unionism was the reason why the Republicans failed to offer a compromise plan to the South and why they opposed measures like the Crittenden Compromise. Dr. Potter is emphatic in stating that Lincoln and most of the Republican leaders did not refuse compromise because they wanted war. He refutes convincingly, in the reviewer's opinion, the late Professor Ramsdell's contention that Lincoln maneuvered the Confederacy into war at Sumter because Lincoln favored a recourse to hostilities.—T. HARRY WILLIAMS.

School of the Citizen Soldier (D. Appleton-Century Company, pp. xvi, 535, $2.40), edited by Lieutenant Colonel Robert A. Griffin, reveals to the general public the subject-matter of an educational project of the Second Army. The theme is the place of America in a world at war. The treatment is temperate, carefully organized, and, for the most part, well written. The soldier receives authoritative information on what we have stood for and why, and on who and how we are fighting. The book's divisions are Geography and World Trade, The World Crisis, American History and the Constitution, and The Armed Forces. Informative chapters on the Japanese and German armies and the place of propaganda in this conflict complete the analysis. Only a few minor defects were noted. The sentence structure in a few spots is inadequate. Certain historical dates and emphasis on universality of two-thirds majorities for Senate action may be questioned. The book is stimulating. It should be very helpful to citizen civilians as well as citizen soldiers. With understanding, the American people will develop an intelligent appreciation—followed by the goal sought by the editor and his commanding officer, i.e., efficient coöperation.—GEORGE C. ROBINSON.

Texts on conservation in America, beginning with President Van Hise's in 1910, have dealt with the technical matter of conservation. The numerous works on the subject appearing during the intervening years reflect an evolution of the concept of conservation ever widening to approach that of the general good through long-range planning. George T. Renner's *Conservation of National Resources* (John Wiley and Sons, Inc., pp. xi, 228, $2.75) varies from the usual texts in giving little attention to the technical aspects of conservation. Instead, in the first nine chapters it briefly presents the story of the growth of the conservation movement, classifies natural resources from the viewpoint of conservation, lists and evaluates the educational materials available, and examines the philosophy involved. It is probable that the treatment of these matters, rather cogently dealt with would have been more compelling if they had been expanded upon. Part II presents simply an outline of a course in conservation of resources. Four remaining chapters consider curriculum, methods, and materials. The work, primarily a syllabus, is intended to be useful chiefly to those in teacher-training and the teacher in service. A bibliography is presented at the end of each chapter.—H. C. COOK.

Before the entry of the United States into World War II, plans were drafted for a powder plant in a rural area of southern Indiana because of the Ohio River water supply and the labor available from marginal farms. Subsequent events led to the tripling of the original capacity and the addition of a bag loading plant. The effects of these projects on Charlestown, a nearby town of less than 1,000 inhabitants which quickly found itself crowded with as many as 6,000 people, have been canvassed by John E. Stoner and Oliver P. Field. Because the "impact of the development upon the combined health services . . . probably was more severe than upon any other branch of the administrative system," Professors Stoner and Field decided to publish the first section of their observations under the title *Public Health Services in an Indiana Defense Community* (Bureau of Government Research, Indiana University, pp. 83). This study is obviously a most timely one; its conclusions are not only informing but heartening to the political science fraternity, which has so closely identified itself with democratic government. Readers of this monograph will undoubtedly look forward to the publication of the second part of the study, which will deal with general administrative services.—HAROLD ZINK.

Management Methods in City Government (International City Managers' Association, pp. v, 60, $1.50) is a manual of administrative practices in council-manager cities prepared by Orin F. Nolting, assistant director of the International City Managers' Association. As a basis for the study, questions were addressed to city managers to learn what methods had evolved from their experiences. But the study is not a mere tabulation of the practices employed, as it embodies the author's own views of what constitutes good administrative practice in such essential activities as the rôle of the manager in dealing with the public, the city council, and other local governmental bodies and his own staff, and his methods of maintaining internal controls. An orthodox exposition of practices generally accepted in theory if not universally followed, the booklet embodies in its few pages many helpful suggestions for those in administrative posts.—S. GALE LOWRIE.

Ronald E. Gregg's *Local Government Debts in Pennsylvania* (University of Pennsylvania Press, pp. xi, 169) is a survey of trends in local government indebtedness in Pennsylvania. The legal and administrative aspects of local debts, and state-local relations, are reviewed. The causes and character of local indebtedness are analyzed. On the basis of this analysis, the writer presents recommendations for improving the legal and administrative methods of control. Local debt problems require coöperation of both state and local governments. Local discretion, especially in matters of borrowing, should be left unimpaired. But there is need, as the writer shows, for more effective state supervision and control. For this purpose, he suggests some legal revision and administrative control by a state commission. The descriptive parts of the book are supported by tables and charts. Studies of this kind are of value in providing factual data for determining state-local fiscal policies, expecially in the matter of local indebtedness.— JAMES E. PATE.

INTERNATIONAL AFFAIRS

Edward H. Carr, of the University College of Wales, had already written a stimulating survey, *The Twenty Years Crisis, 1919–1939*, before publishing *Conditions of Peace* (Macmillan Co., pp. xxiv, 282, $2.50), in which he first discusses fundamental issues—political, economic, and moral—before trying to outline future policy. His attack throughout is positive. We failed after 1919 because we looked backward, seeking security and normalcy. In the last war and this one, all negative war aims are futile. Wilson's objectives did win the war, but were not dynamic enough afterwards. The attempt to revert to price and profit as regulators of the economic system was also doomed to fail. Hereafter we must reinterpret equality and liberty in economic terms and make political rights effective over economic power. A strong sense that obligations carry rights must also be developed. One of the most trenchant and convincing themes of the book is the failure of producer rule and the necessity of approaching all economic problems from the consumers' side. And, just as giving the producers all power ruined them, along with the community, "individual enterprise" was destroyed, not by "socialism," but by the innate trend of large-scale, competitive capitalism toward monopoly. The industrial combines gave us the alternative of collectivism, haphazard or controlled. Slowly, but surely, the concept "welfare" is replacing that of "wealth." Hereafter we must plan consumption and produce for it, regarding exports only as a way of paying for imports. Rejecting isolation from Europe or dominance of it by Britain as untenable, along with any balance of power, Carr argues strongly for an organization of Europe on an economic basis, one in which all peoples would have full cultural autonomy at home. They must "self-determine" themselves into a federated Europe in which both war potential and raw materials will be subject to international control, thus breaking the German monopoly of heavy industry. The German problem "remains insoluble until it is transplanted into a broader setting." There can be, he insists, reconciliation only by coöperation. Toward this end, he envisages full occupation of Germany before an armistice "if any," no punishment of Nazi leaders, continent-wide relief, and in Germany enforcement only of a necessary minimum of civil rights, reasonable freedom of speech and assembly, together with respect for processes of law and no racial discrimination—a rather large order, but bearable medicine, he believes, when administered along with the invigorating labors of a European Planning Authority. The entire book is a suggestive approach to a contructive handling of the post-war period. Everyone who hopes to avoid losing the peace again should read it, whether he approves of all details or not. No one can hope to encompass fully the extremely complicated reconstruction problems which we face, but Professor Carr has made his courageous and substantial contribution—one not to be overlooked.—D. F. FLEMING.

Sir George Young, who describes himself as a diplomat for twenty years and a democrat for twenty more, completed his *Federalism and Freedom* (Oxford University Press, pp. xvi, 204, $2.50) at the close of 1940; but before its publication in July, 1941, he added a brief postscript declaring that Germany's attack on Russia not only ensured England's winning the war, but also improved the feasibility of his plan for the politico-economic unification of the cockpit of Europe. Despite Downing Street's contention that such proposals give "aid and comfort to the king's enemies," the author offers his book "as a contribution to the War of Wits that is the best response to the brutalities of the Blitzkrieg" and a complete answer to "the German taunt that our policy is to divide and weaken Europe for our own ends." While Sir George agrees with Labor party and Malvern Conference demands for federation, he differs on one important point: each Great Power (the real reason why "the life of man is solitary, poor, nasty, brutish, and short") should be liquidated as a war-maker by federalization. The British Isles, France, and Germany would become federations of seven, six, and ten states, respectively; these plus the states of Polish, Bohemian, Scandinavian, Baltic, and Russian federations plus Sweden, Holland, Belgium, and European Turkey would comprise the Union of Free Federated Europe; and others could join later. Representation would be equal in the appointive Union Council and proportional in the elective Union Congress, while the Union constitution, in its political and economic features, might well be drafted according to Swiss and Portuguese models. Sir George's novel political scheme is accompanied by four critical chapters on remedial and reconstructive economics and the relation of war to law and peace. Besides hinting at an eventual union of continental federations, the author draws heavily on personal experience, recent history, and a keen sense of humor. —J. VAN DER ZEE.

Economic Problems of War and Its Aftermath (University of Chicago Press, pp. 197, $2.00), edited by Chester W. Wright, consists of seven lectures delivered under the Charles R. Walgreen Foundation at the University of Chicago. The lectures were addressed to the general public rather than to specialists, and were designed to promote a more intelligent public opinion on the problems dealt with. The first two lectures are historical. The first deals with and analyzes the effects of war on industrial development in Western Europe during the sixteenth and seventeenth centuries. The second is concerned with the previous experience of the United States in meeting the economic problems arising in war-time, and is particularly instructive on the lessons to be learned from past experience. Lecture 3 reviews the problems of war financing. Emphasis is placed upon the present danger of inflation, and bold action is urged in levying heavy taxes, even to the extent of using the admittedly inequitable retail sales tax, and resorting to compulsory loans. Problems of price control are considered in the fourth lecture. Particular reference is made to the serious administrative difficulties which the establishment of a general price ceiling would involve. The fifth lecture, on the war state, is devoted to a discussion of the growing centralization of power in the executive branch of the government and touches upon the reasons for this centralization. The sixth lecture is a provocative discussion of the war and the crisis of individualism. The final lecture is concerned with the structure of future society. Problems of future structure are posed—economic, governmental, and social—and suggestions as to trends are made. The author, however, is properly cautious and avoids a rigid formula.—NATHAN L. SILVERSTEIN.

What kind of a world is it going to be in the new post-war age? Is it to be a world of freedom and democracy, or one of exploitation, domination, and discrimination? Haridas T. Muzumdar's *The United Nations of the World* (Universal Publishing Co., pp. 288, $2.50) maintains that there can be no peace and freedom on earth as long as the empire system continues to plague mankind. The imperialists suffer from racial and political megalomania, and are a menace to the world. They must go. Dr. Muzumdar, whose subtitle is "How to Win the Peace," is of the opinion that there can never be durable peace in Asia and Africa, and consequently in the entire world, until imperialism is abolished. He concedes the possibility of the victorious United Nations, under the leadership of President Roosevelt, creating a new World Order on the basis of justice and liberty; but the weasel words of the Atlantic Charter and the Declaration of the United Nations give little hope at present that such an order will be forthcoming at the end of the war. In his analysis of the Charter, the author points out, for example, that its very first article "lends credence to the belief not only that is Britain intent upon maintaining her far-flung empire, but that she is also intent upon having America underwrite the *status quo*, at least so far as the British empire is concerned." Dr. Muzumdar, who is a follower of Mahatma Gandhi, pleads eloquently for all-out democracy and human brotherhood. Though somewhat poorly organized, there is much material in the volume which will be of interest and value to all who have a genuine feeling for human liberty. The book is quick with moral earnestness.—SUDHINDRA BOSE.

For the tribulations of Palestine since 1918 one may blame the Arabs, the Jews, or the British. Paul L. Hanna, in his *British Policy in Palestine* (American Council on Public Affairs, pp. xiii, 214, cloth $3.50, paper $3,00), picks the British. He admits that the Arabs have a claim to the territory under post-war assurances, that the wishes of the Arab inhabitants would not be disregarded, and under the McMahon-Husain correspondence, less by the wording in the latter case than by misinterpretation. He feels that the Jews have even a better claim since, as he says, everyone expected a Jewish state to be the natural outgrowth of the

Jewish homeland provision of the Balfour Declaration (pp. 37, 157), and since "the creation of a Jewish national home became the primary duty of the mandatory" (p. 158). From this view he proceeds to be critical of all the British attempts to solve the problem because all such attempts were compromises. Such compromises were always foredoomed to failure, he says, because in every case the Arabs refused to become reconciled to the Jewish national home, i.e., Jewish state. According to the author, no solution is at present possible. But there were two alternatives immediately after 1918: the British could have repudiated either their promises to the Arabs or their promises to the Jews. The British, indeed, might have succeeded in repudiating the Balfour Declaration, without undue Jewish retaliation, but preferred not to try. On the other hand, it is questionable whether the establishment of a Jewish state of Palestine would not have provoked Moslem and Arab reactions which would have made the Near East even more inflammable today than it is. In any case, the British are rebuked in this volume for having tried to be fair and just rather than having attempted to be expedient. The footnotes are at the end of the book, which perhaps is a help to the casual reader but a nuisance for the student.—WILBUR W. WHITE.

POLITICAL THEORY AND MISCELLANEOUS

American political scientists have long been conscious of their responsibilities for citizenship training. They have also been keenly aware of the relatively meager results they can show after several decades of effort; for there is little evidence that the impact of political science upon public affairs is commensurate with the time and effort expended in the field, not only on the college level but on the elementary and secondary school levels as well. A perusal of *Education for Citizenship Responsibilities* (Princeton University Press, pp. x, 126), edited by Franklin R. Burdette, will bring some comfort to those political scientists who have a sense of shame that citizenship education has not been more successful, because in this little volume it is made very clear that many other departments, or fields, also have responsibilities for such training. An anthropologist, three economists, two geographers, two historians, a philosopher, and two sociologists, in addition to one political scientist, all insist that each of their respective fields plays an important rôle in education for citizenship responsibilities. The only contributor who does not express such insistence is the psychologist, who suggests merely that the possible use of appropriate psychological topics as effective aids in citizenship training should be thoroughly tested. Each contributor is convincing, and the reader will readily and properly conclude that the shortcomings of citizenship education cannot be charged against political science alone. Such a conclusion should not, of course, lessen the interest of the political scientist in the problem; it should rather stimulate him to greater coöperative team work with those in other fields. In fact, the political scientist might well be the leader in this coöperative team work. There is general agreement among the contributors that citizenship training should begin at an early age, and the implication is clear that the social sciences can be taught at all levels, from the primary grades through the graduate school. Philosophy, as it is defined by Professor W. E. Hocking, the contributor in this field, might well, according to this authority, begin with adolescence. None of the writers directly suggests indoctrination; in fact, emphasis is given at various points to the importance of teaching facts and truths. Nevertheless the reader will get the definite feeling that the net results of the total suggestions from the various fields would include a certain amount of indoctrination of the values of the democratic way of life. Professor Hocking, for example, suggests that the educator must not only "encourage the youthful ideal of being completely rational," but also "correct the excessive zeal of the mind which supposes that it can prove everthing which is worth knowing." The book is recommended to all who are interested in making American citizenship more intelligent and responsible, and is especially recommended to social scientists, to school administrators, and to members of curriculum committees.—BEN A. ARNESON.

In his *The Development of the Labor Movement in Great Britain, France, and Germany* (University of North Carolina Press, pp. 199, $2.50), W. A. McConagha conducts a Cook's tour which has the virtues and the vices of that admirable institution. One covers the ground and sees the principal sights—Taff Vale and the General Strike of 1926, the C. G. T. and the C. G. T. U., Marx and Lasalle. But with only the space of a single chapter to devote to the development of the labor movement in each of the three countries studied, viewing the landmarks leaves little time for analysis or reflection. Particularly is the author cramped by the necessity of crowding the rich British experience since the Combination Acts of 1799 and 1800 into less than seventy pages. The story of the French and German labor movements, somewhat less familiar to American students, is more satisfactorily told. The author, disclaiming any originality of treatment, indicates that his purpose in preparing the book was to make a knowledge of labor institutions in other countries more conveniently accessible to American students. While this goal has been adequately fulfilled, the work's usefulness might have been increased had the author raised his sights a little. The brief introductory note on the theory of organized labor movements might well have been expanded, and one feels the want of a summary chapter which a truly comparative approach would require. The book is weak in recent developments, the British story, for example, ending with the Trade Disputes Act of 1927. Quarreling with the limits which the author imposed upon himself should not, however, obscure the fact that within those limits he has produced an excellent and useful survey of an interesting field.—C. HERMAN PRITCHETT.

The American Civil Liberties Union, under the dynamic leadership of Roger N. Baldwin, has been a consistent defender and exponent of civil liberties for all groups, classes, and individuals. Its activities in behalf of freedom in education are factually and sympathetically presented by Davidson Edison Bunting in *Liberty and Learning* (American Council on Public Affairs, pp. xiii, 147, cloth $2.50, paper $2.00). The story shows how the Union has pioneered, along with the American Association of University Professors and the American Federation of Teachers, in defending the freedom of teachers and teaching, particularly since World War I, which brought forth new problems in the sphere of the Bill of Rights. The Union, which has coöperated with these other organizations, has gone further into the defense of the freedom of discussion by students on the campus. It fought the anti-evolution law of Tennessee in the Scopes case. It has suffered many technical defeats, but has helped to make the way hard for administrative authorities who would dismiss a teacher for unpopular views. The study is a sort of short handbook of information on cases, participants, issues, books, and articles in this important field. As George Counts says in the introduction, it is "very timely."—H. C. NIXON.

There seems to be increasing suggestion in our democracies that we must have more integration of the spiritual with the political domains if we are to meet the challenge in the world today. This concern lends justification, of course, to a study such as the monograph by Ananda K. Coomaraswamy, of the Boston Museum of Fine Arts, entitled *Spiritual Authority and Temporal Power in the Indian Theory of Government*, published as Volume 22 of the American Oriental Series (American Oriental Society, pp. 87). The analysis, drawing upon the mythologies and the sacred writings of India, will have more interest for the specialist than for any wide public. Highly documented, the text is studded with citations and with Indian terminology in parentheses, yet written in readable style. Almost astonishing is the abundance of the sex motif that runs through the literary sources concerned. The male and the female principles of the universe are represented widely in the relations also of *regnum* and *sacerdotium*—wherein, unlike the similar analogies to be found in the philosophies of medieval Europe, the originative male authority is symbolized by the priest, while *regnum* is but feminine. All this, while more poetical than in any objective sense analytical, is not entirely without meaning to a present-day comprehension. Underlying the mythologies there is represented, in a way that reminds of Plato, that the essence of all true government, whether of the individual or of the community as a whole, is self-government. At the same time the self, in knowing itself, yields to the mystic ocean of Being. Whatever this thought may be, it is not a self-aggrandizement such as might condemn a "Christian morality fit for slaves." If it is a primitive level of political thought and feeling that is depicted, it is less so than the Machiavellian tendencies that have influenced the modern West to a degree that we have only now begun to realize.—WALTER SANDELIUS.

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